

## PUBLICATION UPDATE

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# Ohio Jury Instructions— Civil

Publication 4346

Release 21S1

June 2021

### HIGHLIGHTS

**This release includes revisions to the following:**

- Chapter CV 315— Damages
- Chapter CV 321— Interrogatories [NEW CHAPTER]
- Chapter CV 323— Verdicts [NEW CHAPTER]
- Chapter CV 403— Comparative Negligence
- Chapter CV 417— Medical Negligence
- Chapter CV 421— Other Professional Negligence
- Chapter CV 429— Assault, Battery, Infliction of Serious Emotional Distress
- Chapter CV 433— Invasion of Privacy
- Chapter CV 609— Eminent Domain
- Chapter CV 633— Wills

- Chapter CR 401— Preliminary Jury Matters
- Chapter CR 417— Definitions
- Chapter CR 421— Defenses
- Chapter CR 425— Verdicts
- Chapter CR 507— Sex Offenses
- Chapter CR 509— Arson and Related Offenses
- Chapter CR 521— Offenses Against Justice and Public Administration
- Chapter CR 749— Motor Vehicle Crimes

**Chapter CV 315** contains one revised instruction on future damages; periodic payments in non-comparative negligence tort actions; one defendant and one revised instruction on punitive damages; certain tort actions and one revised instruction on reasonable attorney fees.



**Chapter CV 321** [NEW CHAPTER] adds one instruction on interrogatories.

**Chapter CV 323** [NEW CHAPTER] adds one instruction on verdict basic formats, one instruction on verdict for will contest, and one instruction on verdict for eminent domain.

**Chapter CV 403** includes one revised instruction on each of the following: comparative negligence — one defendant; comparative negligence — one defendant, interrogatories on future damages not required; contributory fault — one defendant, interrogatories on future damages not required; comparative negligence — more than one defendant; comparative negligence — more than one defendant, interrogatories on future damages not required; comparative fault — more than one defendant, interrogatories on future damages not required; comparative negligence — one defendant, interrogatories on future damages required; comparative fault — one defendant, interrogatories on future damages required; comparative negligence — more than one defendant, interrogatories on future damages required; and comparative fault — more than one defendant, interrogatories on future damages required.

**Chapter CV 417** replaces one instruction on loss of less-than-even chance of survival/recovery and one instruction on interrogatories.

**Chapter CV 421** contains one revised instruction on interrogatories.

**Chapter CV 429** includes one re-

vised instruction on intentional tort claims, allocation of damages, multiple defendants, interrogatories required and one revised instruction on intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required.

**Chapter CV 433** replaces the chapter's five instructions with revised instructions on each of the following: intrusion upon seclusion of another; public disclosure of embarrassing private facts; publicity placing a person in false light; appropriation of name or likeness; and right of publicity in individual's persona.

**Chapter CV 609** contains one revised instruction on verdict.

**Chapter CV 633** replaces the chapter's six instructions with seven new instructions on each of the following: validity of will or codicil; sound mind and memory; under (undue) (improper) influence defined; fraud; additional considerations regarding bequests; and revocation.

**Chapter CR 401** includes one revised instruction on other acts and prior conviction.

**Chapter CR 417** replaces one instruction on cause; natural consequences, one instruction on other causes, intervening causes, one instruction on affirmative defense R.C. 2901.05(C), and one instruction on reasonable cause to believe.

**Chapter CR 421** replaces one instruction on self-defense against danger of death or great bodily harm, one instruction on self-defense against



danger of harm to person — use of non-deadly force R.C. 2901.05, one instruction on defense of another — use of non-deadly force R.C. 2901.05, one instruction on self-defense against danger of bodily harm, one instruction on self-defense of person or residence against danger of death or great bodily harm — use of deadly force R.C. 2901.05, one instruction on defense of another against danger of death or great bodily harm — use of deadly force R.C. 2901.05, and one instruction on presumption — self-defense/defense of another — when in residence or vehicle, use of deadly force.

**Chapter CR 425** includes one revised instruction on affirmative defense and one instruction on value and special property.

**Chapter CR 507** contains one revised instruction on sexually violent predator R.C. 2971.02.

**Chapter CR 509** replaces one instruction on criminal mischief R.C. 2909.07 and adds one new instruction on criminal mischief R.C. 2909.07.

**Chapter CR 521** contains one revised instruction on bribery R.C. 2921.02, one new instruction on brib-

ery R.C. 2921.02, one revised instruction on intimidation of a/an attorney, victim, or witness in a criminal case R.C. 2921.04, one revised instruction on retaliation R.C. 2921.05, one revised instruction on falsification; in theft offense; to purchase firearm; to obtain concealed-handgun license; regarding a removal proceeding R.C. 2921.13, one new instruction on restrictions on present or former public officials or employees R.C. 102.03, one revised instruction on failure to report a crime: a felony or the unauthorized use of computer, cable, or telecommunication property R.C. 2921.22(A), one revised instruction on failure to report a crime: gunshot/stab wound R.C. 2921.22(B), one revised instruction on failure to report knowledge of a death R.C. 2921.22(C), one revised instruction on failure to report a burn injury R.C. 2921.22(E), one revised instruction on disclosure of confidential information R.C. 2921.24, and one revised instruction on obstructing official business R.C. 2921.31.

**Chapter CR 749** replaces one instruction on failure to stop after accident; exchange of identity and vehicle registration R.C. 4549.02.



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Publication 4346 Release 21S1CIV

June 2021

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<input type="checkbox"/>	83 . . . . .	83
<input type="checkbox"/>	94.1 thru 97 . . . . .	95 thru 98.1
<input type="checkbox"/>	105 thru 111 . . . . .	105 thru 113
<input type="checkbox"/>	123. . . . .	123
<input type="checkbox"/>	No Material removed . . . . .	125 (file preceding 126.3)
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<input type="checkbox"/>	143 thru 193 . . . . .	143 thru 189
<input type="checkbox"/>	277. . . . .	277
<input type="checkbox"/>	287 thru 294.1 . . . . .	287 thru 294.1
<input type="checkbox"/>	299 thru 305 . . . . .	299 thru 305
<input type="checkbox"/>	335 thru 359 . . . . .	335 thru 357
<input type="checkbox"/>	375 thru 378.5 . . . . .	375 thru 378.5
<input type="checkbox"/>	417. . . . .	417
<input type="checkbox"/>	439 thru 445 . . . . .	439 thru 445
<input type="checkbox"/>	657. . . . .	657
<input type="checkbox"/>	667. . . . .	667
<input type="checkbox"/>	747 thru 751 . . . . .	747 thru 752.1
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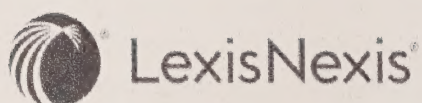
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# OHIO JURY INSTRUCTIONS

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*A collection of STANDARD JURY INSTRUCTIONS in civil and criminal cases prepared by the Jury Instructions Committee of the Ohio Judicial Conference.*

CIVIL INSTRUCTIONS  
GENERAL  
SPECIAL TOPICS



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
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# ***PREFACE TO OHIO JURY INSTRUCTIONS***

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This preface introduces a new revised edition of the Ohio Jury Instructions (OJI) reorganized into self-contained civil and criminal volumes. The former Volume 1 “General Instructions” has been eliminated. Applicable general instructions are included in the civil and criminal volumes. There is one civil volume, now organized by general subject matter areas, and one criminal volume; however, there are three binders. The criminal volume is contained in two binders with a separate tab for “Traffic” offenses.

The purpose of the reorganization is to simplify use of OJI by judges and practitioners. Users will no longer have to switch back and forth between the current Volume 1 “General Instructions” and the substantive instructions contained in the remaining volumes. Also, the numbering of all instructions has been revised and simplified. Instructions will now be identified as “CV”(Civil) and “CR”(Criminal). For example, current 4 OJI 503.01, dealing with Aggravated Murder, becomes CR 503.01. A “Correlation Table” is included in each volume containing previous and new section numbers. Both volumes have newly designed, slightly larger loose-leaf binders. The format of individual instructions has not changed.

## **COMMENT**

These first two paragraphs summarize the current reorganization. The balance of the preface provides historical perspective.

Ohio Jury Instructions, commonly called “OJI”, was originally the project of Judges Robert L. McBride and Eugene R. McNeill. Its purpose was to present, in the same place in a single set of books, the instructions prepared by judges along with specific examples of such instructions, as well as others that were given in actual cases. The project was a joint effort of the Ohio Judicial Conference and the Ohio Common Pleas Judges Association. It was believed that the Bench and the Bar of Ohio should have the benefit, as well as the economy and convenience, of having all jury instruction material in one place in a single set of books. The jury instruction committee was composed exclusively of judges. In the event that the Committee was unable to develop a “standard” instruction, instructions were provided from individual cases. In theory, this method of combined presentation permitted the Committee to take the time required to develop its “standard” material through provisional drafts and experimental use prior to publication. The consensus among OJI Committee members was that the work of an individual judge would always be helpful until such time as “standard” instructions were developed.

Then, as now, the copyright was owned by the Ohio Judicial Conference, thereby providing for the permanent supervision by the judiciary of the development and publication of the OJI jury instructions.

It was the hope of all parties involved in 1958 that the Ohio Jury Instructions (OJI) would be helpful to the Bench and to the Bar and that the usefulness of the work would improve over the years with the continued cooperation of those interested in the instructional administration of the judicial system in the State of Ohio.



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# **PREFACE TO OHIO JURY INSTRUCTIONS**

## **COMMENT**

Drawn from “THE NEW OJI” by Robert L. McBride, Chairman, and Eugene R. McNeill, Vice Chairman.

In 1960, a “*Standard Civil Outline—Negligence*” was released. A companion criminal outline followed in 1962. The responsibility for publication of the instructions was assigned to the Ohio Judicial Conference to relieve the Ohio Common Pleas Judges Association of the printing, sale and distribution of the material.

A standard or pattern jury instruction is a brief, accurate, and complete statement in simple and understandable language covering a single situation, purpose, or point of law. Interest and comprehension by the jury are the first considerations. Technical expressions of decision, partisan language, and references to evidence are eliminated. Exceptional situations are set out separately for use when required by special facts. The Committee recognizes the necessity for direct and simple English. “A court in considering the propriety of any jury instruction must always bear in mind that the purpose of the jury instruction is to clarify the issues and the jury’s position in the case. It must be remembered that juries are composed of ordinary people on the street, not trained grammarians, and that fine distinctions in the meaning of words or phrases are not ordinarily recognized by the average layperson. Thus, in considering the propriety of any instruction, the meaning of the words used in the instruction must be thought of in their common meaning to the layperson and not what such words mean to the grammarian or to the trained legal mind.” *Bahm v. Pittsburgh & Lake Erie RR. Co.* (1966), 6 Ohio St.2d 192.

## **COMMENT**

Drawn from *Preface to Volume I—1968*.

Three types of instruction appeared in OJI: (1) the “standard” or “pattern” instruction, though not necessarily titled as such; (2) the “approved” instruction, which is an instruction found in a particular case, and (3) the “new” instruction, which is a pattern instruction recommended by the Committee, but which has not yet withstood the test of time. OJI no longer uses these titles.

## **COMMENT**

Drawn from *Preface to Volume I—1983*.

In January 1987, the Ohio Jury Instructions Committee reorganized itself and adopted a plan for the revision of the civil instructions. Under the reorganization, the Committee consisted of an editorial board composed of trial and appellate judges with final approval of all material to be published in OJI, and the writing committees appointed ad hoc to draft new material and revisions. The Board also employed a law professor as an editorial consultant, whose task was to review all drafts, to evaluate their accuracy and scope, and to assure conformity with the Committee’s Style Manual. The writing committees were composed of experienced and knowledgeable persons from the judicial, practicing, and academic branches of the profession, under the supervision of a member of the Editorial Board.

It was during this phase in the development of OJI that the use of Comments was broadened to advise OJI users of many matters deemed to be of major significance. During this phase, the



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## PREFACE TO OHIO JURY INSTRUCTIONS

Committee designated as “PROVISIONAL” those instructions published to be of assistance to the Bench and Bar of Ohio, but (of necessity) without specific judicial approval. OJI no longer designates instructions as “PROVISIONAL”. During this general time period, a software version of OJI became available for various personal computers.

### COMMENT

Drawn from “*Preface to Ohio Jury Instructions—1993.*”

In the words of former Chair Robert B. Ford, “ever shorter, ever plainer, ever fairer, this is the mission of OJI.” Although it is easy to state the goal, it is difficult to attain it. In Ohio, pattern jury instructions are not “pre-approved” by appellate courts. Therefore, it is sometimes difficult to use “plain English” because the Committee is required to use statutory and case law language in drafting instructions. The law is also evolving, and the ever-increasing number of statutes and cases constantly increases the volume of the Committee’s work.

The Committee has divided into Civil and Criminal Subcommittees and developed an informal protocol in order to meet the need for more and more instructions. The Ohio State Bar Association and its jury instructions committee have joined with the Ohio Judicial Conference in the ongoing effort to enhance this product. The combined effort has already generated numerous quality instructions, both civil and criminal. Multiple drafting committees using the talents of both Bench and Bar are now in place to draft and modify instructions. Other such drafting committees will be formed as needed.

Enhanced technology has also found its way into OJI. Most, if not all, of the OJI Committee’s members have laptop computers to aid their efforts. Use of projection and internet technology at subcommittee meetings has greatly enhanced the editing process. At present, OJI is published in print and CD versions by LexisNexis and on-line versions by LexisNexis, Westlaw, and Casemaker, thereby maximizing user access.

And so it goes . . . evolving, hopefully improving . . .







# Volume 1 Table of Contents

A COMPLETE SYNOPSIS FOR EACH CHAPTER APPEARS AT  
THE BEGINNING OF THE CHAPTER

## **TITLE 1                      LAW OF THE INSTRUCTIONS**

### **Chapter CV 101        LAW OF THE INSTRUCTIONS**

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#### INSTRUCTIONAL ADMINISTRATION OF JUSTICE

CV 101.01	Instructions defined [Rev. 12-1-07]
CV 101.03	Instruction at every step of the trial [Rev. 12-1-07]
CV 101.05	The role of the judge [Rev. 12-1-07]
CV 101.07	Time of delivery [Rev. 12-1-07]
CV 101.09	Effective delivery [Rev. 12-1-07]
CV 101.11	Tests for effectiveness [Rev. 12-1-07]
CV 101.13	Record required [Rev. 12-1-07]
CV 101.15	An appeal on instructions [Rev. 12-1-07]
CV 101.17	Error and prejudice [Rev. 12-1-07]
CV 101.19	Standard instructions [Rev. 12-1-07]

#### SELECTING THE JURY

CV 101.21	Selecting the jury [Rev. 12-1-07]
CV 101.23	Common voir dire instructions [Rev. 12-1-07]

#### PRELIMINARY INSTRUCTIONS

CV 101.25	Instructions before trial [Rev. 12-1-07]
CV 101.27	Preliminary trial instructions [Rev. 12-1-07]
CV 101.29	A word of caution [Rev. 12-1-07]

#### INSTRUCTIONS DURING TRIAL

CV 101.31	Instructions during trial [Rev. 12-1-07]
CV 101.33	Evidential instructions [Rev. 12-1-07]

#### REQUESTS FOR FINAL INSTRUCTIONS

CV 101.35	Requests for final instructions [Rev. 12-1-07]
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#### INTERROGATORIES TO THE JURY

CV 101.37	Special verdicts; advisory jury [Rev. 12-1-07]
CV 101.39	Interrogatories to the jury [Rev. 12-1-07]
CV 101.41	Narrative response interrogatories [Rev. 12-1-07]
CV 101.43	Accepting answers to interrogatories [Rev. 12-1-07]

#### GENERAL INSTRUCTIONS

CV 101.45	The rules [Rev. 12-1-07]
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## Volume 1 Table of Contents

CV 101.47	Definition and function of general instructions <i>[Rev. 12-1-07]</i>
CV 101.49	Undisputed issues <i>[Rev. 12-1-07]</i>
CV 101.51	Undisputed facts <i>[Rev. 12-1-07]</i>
CV 101.53	Disputed issues <i>[Rev. 12-1-07]</i>
CV 101.55	Specific law <i>[Rev. 12-1-07]</i>
CV 101.57	Cautionary and advisory instructions <i>[Rev. 12-1-07]</i>
CV 101.59	Verdicts and concluding instructions <i>[Rev. 12-1-07]</i>
CV 101.61	Written instructions <b><i>[Rev. 8-6-14]</i></b>
CV 101.63	Objections and requests after general instruction <i>[Rev. 12-1-07]</i>

### GUIDES FOR GENERAL INSTRUCTIONS

CV 101.65	Define legal terms and expressions <i>[Rev. 12-1-07]</i>
CV 101.67	Logical and consistent development <i>[Rev. 12-1-07]</i>
CV 101.69	Complete, accurate and pertinent <i>[Rev. 12-1-07]</i>
CV 101.71	Ordinary, understandable language <i>[Rev. 12-1-07]</i>
CV 101.73	Brevity and repetition <i>[Rev. 12-1-07]</i>
CV 101.75	Tailor to individual case; special requests <i>[Rev. 12-1-07]</i>
CV 101.77	Objective, fair and impartial <i>[Rev. 12-1-07]</i>
CV 101.79	Deliver effectively <i>[Rev. 12-1-07]</i>
CV 101.81	Language and style <i>[Rev. 12-1-07]</i>

### INSTRUCTIONS DURING DELIBERATIONS

CV 101.83	During deliberations <i>[Rev. 12-1-07]</i>
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### VERDICT AND DISCHARGE INSTRUCTIONS

CV 101.85	Accepting the verdict <i>[Rev. 12-1-07]</i>
CV 101.87	Discharge Instructions <i>[Rev. 12-1-07]</i>

## **TITLE 2                    BASIC CIVIL OUTLINE AND SAMPLE INSTRUCTIONS**

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### **Chapter CV 201        CHECKLISTS**

CV 201.01	Trial outline/checklist <b><i>[Rev. 8-11-10]</i></b>
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### **Chapter CV 203        SELECTING THE JURY: SAMPLE INSTRUCTIONS**

CV 203.01	Welcoming remarks <b><i>[Rev. 10-23-10]</i></b>
CV 203.03	Voir dire questions: sample instruction <b><i>[Rev. 1-22-11]</i></b>

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### **Chapter CV 205        PRELIMINARY INSTRUCTIONS: SAMPLE INSTRUCTIONS**

CV 205.01	Preliminary instructions: sample instruction <b><i>[Rev. 10-23-10]</i></b>
CV 205.03	Admonitions to the jury: sample instruction <b><i>[Rev. 8-15-12]</i></b>
CV 205.05	Recess instructions: sample instruction <b><i>[Rev. 10-23-10]</i></b>



## *Volume 1 Table of Contents*

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### **Chapter CV 207      FINAL INSTRUCTIONS: SAMPLE INSTRUCTIONS**

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CV 207.01	Introduction: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.03	Burden of proof: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.05	Preponderance: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.07	Evidence and inferences: sample instruction <i>[Rev. 8-17-11]</i>
CV 207.09	Evidence excludes: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.11	Credibility: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.13	Depositions: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.15	Expert witness: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.17	Case specific facts and law <i>[Rev. 12-11-10]</i>
CV 207.19	Proximate cause: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.21	Personal (injury) (damage): sample instruction <i>[Rev. 12-11-10]</i>
CV 207.23	Mathematical formula: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.25	Duty to mitigate: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.27	Quotient verdict: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.29	Mortality table: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.31	Present value of future damage; income taxes: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.33	Introduction to deliberations: sample instruction <i>[Rev. 12-11-10]</i>
CV 207.35	Common closing remarks: sample instruction <i>[Rev. 2/1/20]</i>
CV 207.37	Questions by the jury: sample instruction <i>[Rev. 8/6/14]</i>
CV 207.39	Closing: sample instruction <i>[Rev. 12-11-10]</i>

### **TITLE 3                      GENERAL CIVIL TRIAL INSTRUCTIONS**

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#### **Chapter CV 301      PRELIMINARY JURY MATTERS**

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CV 301.01	Before administering oath on voir dire <i>[Rev. 2/22/20]</i>
CV 301.03	Qualifying the jury <i>[Rev. 1-22-11]</i>
CV 301.05	Orientation for new jury <i>[Rev. 1-22-11]</i>
CV 301.07	Admonitions to the jury <i>[Rev. 8-15-12]</i>
CV 301.09	Jurors taking notes <i>[Rev. 1-22-11]</i>
CV 301.11	Jurors asking questions <i>[Rev. 1-22-11]</i>
CV 301.13	Interpreters and translators <i>[Rev. 8-15-12]</i>

---

#### **Chapter CV 303      STANDARDS OF PROOF**

---

CV 303.01	Revivor <i>[Rev. 3-19-11]</i>
CV 303.03	Burden of proof <i>[Rev. 10-22-11]</i>
CV 303.05	Preponderance <i>[Rev. 12-11-10]</i>
CV 303.07	Clear and convincing <i>[Rev. 2/24/28]</i>



# *Volume 1 Table of Contents*

---

## **Chapter CV 305      EVIDENCE AND CREDIBILITY**

---

CV 305.01	Evidence and inferences <i>[Rev. 8-17-11]</i>
CV 305.03	Evidence excludes <i>[Rev. 3-19-11]</i>
CV 305.05	Credibility <i>[Rev. 8-15-12]</i>

---

## **Chapter CV 309      INSTRUCTIONS DURING TRIAL**

---

CV 309.01	Presumptions <i>[Rev. 9/14/19]</i>
CV 309.03	Prima facie evidence <i>[Rev. 3-19-11]</i>
CV 309.05	Limited purpose evidence <i>[Rev. 2-24-07]</i>
CV 309.07	Depositions, transcripts and interrogatories <i>[Rev. 12-11-10]</i>
CV 309.09	Opinion of layman <i>[Rev. 1-22-11]</i>
CV 309.11	Expert witness and hypothetical question <i>[Rev. 12-11-10]</i>
CV 309.13	Recess instructions <i>[Rev. 3-19-11]</i>
CV 309.15	Jury view; before visiting the scene(s) <i>[Rev. 1-23-10]</i>
CV 309.17	Before conducting test, experiment, or demonstration <i>[Rev. 3-19-11]</i>
CV 309.19	When party may not testify <i>[Rev. 3-19-11]</i>
CV 309.21	Witnesses of questioned competence <i>[Rev. 3-19-11]</i>
CV 309.23	Improper questions <i>[Rev. 3-19-11]</i>
CV 309.25	Giving written requests to instruct

---

## **Chapter CV 311      INTRODUCTION OF SELECTED ISSUES**

---

CV 311.01	Presentation of issues <i>[Rev. 10-22-11]</i>
CV 311.03	Multiple parties <i>[Rev. 10-22-11]</i>
CV 311.05	Submission of causation and/or damage only <i>[Rev. 10-22-11]</i>
CV 311.07	Counterclaim <i>[Rev. 10-22-11]</i>
CV 311.09	Violations of statute <i>[Rev. 10-22-11]</i>
CV 311.11	Negligence and causation; separate and distinct <i>[Rev. 10-22-11]</i>

---

## **Chapter CV 313      CONCLUSIONS**

---

CV 313.01	Conclusion – one plaintiff, one defendant <i>[Rev. 12/8/18]</i>
CV 313.03	Conclusion – two or more defendants <i>[Rev. 12/8/18]</i>
CV 313.05	Conclusion with affirmative defense <i>[Rev. 12/8/18]</i>

---

## **Chapter CV 315      DAMAGES**

---

CV 315.01	Personal injury: tort actions (claims arising before 4/9/03) <i>[Rev. 8/6/14]</i>
CV 315.01	Personal injury: tort actions (claims arising on and after 4/9/03 but before 4/7/05) <i>[Rev. 5/3/14]</i>
CV 315.01	Personal injury: tort actions (claims arising on and after 4/7/05) <i>[Rev. 8/6/14]</i>
CV 315.03	Consortium <i>[Rev. 12-10-11]</i>



---

## Volume 1 Table of Contents

CV 315.05	Mathematical formula <i>[Rev. 12-11-10]</i>
CV 315.07	Miscarriage; stillbirth <i>[Rev. 12-10-11]</i>
CV 315.09	Future damages; periodic payments in non-comparative negligence tort actions; one defendant (claims arising on and after 1/5/88) <i>[Rev. 2/27/21]</i>
CV 315.11	Future damages; periodic payments in comparative negligence tort actions; two defendants, interrogatories on comparative negligence required (claims arising on and after 1/5/88) <i>[Rev. 5-6-06]</i>
CV 315.13	Tort actions based on claims for future damages; cost of annuity <i>[Rev. 5-6-06]</i>
CV 315.15	Aggravation; acceleration <i>[Rev. 12-10-11]</i>
CV 315.17	Earnings <i>[Rev. 12-10-11]</i>
CV 315.19	Automobile; personal property <i>[Rev. 12-10-11]</i>
CV 315.21	Loss of use <i>[Rev. 12-10-11]</i>
CV 315.23	Personal property without market value <i>[Rev. 12-10-11]</i>
CV 315.25	Subrogation <i>[Rev. 1-21-12]</i>
CV 315.27	Recovery limited, no joinder - husband, wife <i>[Rev. 1-21-12]</i>
CV 315.31	Injury and expenses - joint trial of separate claims <i>[Rev. 1-21-12]</i>
CV 315.33	Multiple defendants <i>[Rev. 1-21-12]</i>
CV 315.35	Real estate <i>[Rev. 3-28-09]</i>
CV 315.37	Punitive damages; certain tort actions (claims arising on and after 4/7/05) <i>[Rev. 9/12/20]</i>
CV 315.39	Reasonable attorney fees <i>[Rev. 9/12/20]</i>
CV 315.41	Quotient verdict <i>[Rev. 12-11-10]</i>
CV 315.43	Mortality table <i>[Rev. 12-11-10]</i>
CV 315.45	Present value of future damage; income taxes <i>[Rev. 10/3/15]</i>
CV 315.49	Wrongful death, compensatory damages <i>[Rev. 1-21-12]</i>
CV 315.51	Duty to mitigate <i>[Rev. 12-11-10]</i>
CV 315.53	Nominal damages <i>[Rev. 1-21-12]</i>

---

### Chapter CV 317 CLOSING INSTRUCTIONS

---

CV 317.01	Introduction to deliberations: sample instruction <i>[Rev. 12-11-10]</i>
CV 317.03	Common closing remarks: sample instruction <i>[Rev. 2/1/20]</i>
CV 317.05	Alternate juror(s) <i>[Rev. 1-21-12]</i>
CV 317.07	Final closing instructions <i>[Rev. 8/6/14]</i>
CV 317.09	Overnight adjournment <i>[Rev. 2-25-12]</i>

---

### Chapter CV 319 DELIBERATIONS

---

CV 319.07	Deadlock <i>[Rev. 8/15/18]</i>
-----------	--------------------------------

---

### Chapter CV 321 INTERROGATORIES

---

CV 321.01	Interrogatories <i>[Rev. 11/7/20]</i>
-----------	---------------------------------------



# Volume 1 Table of Contents

## Chapter CV 323 VERDICTS

---

- CV 323.01 Basic formats (one plaintiff, one defendant) *[Rev. 11/7/20]*  
CV 323.03 Verdict for will contest *[Rev. 11/7/20]*  
CV 323.05 Verdict for eminent domain *[Rev. 11/7/20]*

## TITLE 4 CIVIL SUBJECT MATTER INSTRUCTIONS: TORT-RELATED ISSUES

## Chapter CV 401 NEGLIGENCE

---

- CV 401.01 Negligence *[Rev. 5-12-12]*  
CV 401.03 Custom *[Rev. 5-12-12]*  
CV 401.05 Duty to look *[Rev. 5-12-12]*  
CV 401.07 Foreseeability *[Rev. 8/5/15]*  
CV 401.09 Person under disability *[Rev. 5-12-12]*  
CV 401.11 Ordinary care involving dangerous substances *[Rev. 5-12-12]*  
CV 401.13 Sudden emergency *[Rev. 5-12-12]*  
CV 401.15 Sudden emergency—legal excuse *[Rev. 12-8-12]*  
CV 401.17 Intoxication *[Rev. 12-8-12]*  
CV 401.19 General caution signs (not a traffic control device) *[Rev. 5-12-12]*  
CV 401.21 Loss of consciousness or other medical emergency *[Rev. 5-12-12]*  
CV 401.23 Mechanical failure *[Rev. 5-12-12]*  
CV 401.25 Act of God *[Rev. 5-12-12]*  
CV 401.33 Res ipsa loquitur *[Rev. 5-12-12]*  
CV 401.35 Common carrier *[Rev. 5-12-12]*  
CV 401.39 Concurrent but independent negligence *[Rev. 5-12-12]*  
CV 401.41 Reckless conduct, wanton or willful misconduct *[Rev. 10/3/15]*

## Chapter CV 403 COMPARATIVE NEGLIGENCE

---

- CV 403.01 Comparative negligence: one defendant (claims arising before 1/5/88) *[Rev. 2/27/21]*  
CV 403.01 Comparative negligence: one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) *[Rev. 2/27/21]*  
CV 403.01 Contributory fault: one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*  
CV 403.03 Comparative negligence: more than one defendant (claims arising before 1/5/88) *[Rev. 2/27/21]*  
CV 403.03 Comparative negligence: more than one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) *[Rev. 2/27/21]*  
CV 403.03 Comparative fault: more than one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*



## *Volume 1 Table of Contents*

CV 403.05	Comparative negligence: one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) <i>[Rev. 2/27/21]</i>
CV 403.05	Comparative fault: one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) <i>[Rev. 2/27/21]</i>
CV 403.07	Comparative negligence: more than one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) <i>[Rev. 2/27/21]</i>
CV 403.07	Comparative fault: more than one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) <i>[Rev. 2/27/21]</i>
CV 403.09	Assumption of the risk <i>[Rev. 10/14/17]</i>
CV 403.11	Rescue or attempted rescue of another
CV 403.13	Last clear chance

---

### **Chapter CV 405      PROXIMATE CAUSE**

---

CV 405.01	Proximate cause <i>[Rev. 12-11-10]</i>
CV 405.03	Remote cause or condition <i>[Rev. 1-10-04]</i>
CV 405.05	Intervening and superseding cause <i>[Rev. 1-10-04]</i>

---

### **Chapter CV 406      NEGLIGENCE CONCLUSIONS**

---

CV 406.01	Conclusions – negligence, one plaintiff, one defendant <i>[Rev. 1-24-09]</i>
CV 406.03	Conclusions – two or more defendants, no plaintiff negligence <i>[Rev. 1-24-09]</i>
CV 406.05	Conclusions – two or more defendants with plaintiff negligence <i>[Rev. 1-24-09]</i>

---

### **Chapter CV 407      CHILDREN**

---

CV 407.01	Care for safety of child
CV 407.03	Child under seven
CV 407.05	Measure of care by child
CV 407.07	Violation of statute by child
CV 407.09	Minor operating a motor vehicle
CV 407.11	Negligence of parent not imputed
CV 407.13	Conclusion on negligence <i>[Rev. 1-24-09]</i>
CV 407.15	Action by parent
CV 407.17	Action by administrator
CV 407.19	Liability of parents for tort of child
CV 407.21	Emancipation
CV 407.23	Damages, injury
CV 407.25	Failure to report known or suspected child abuse or neglect - person acting in official or professional capacity R.C. 2151.421(A)(1) (claims arising on and after 10/6/09) <i>[Rev. 8-19-09]</i>

## *Volume 1 Table of Contents*

CV 407.27	Failure to report known or believed child abuse or neglect - cleric or church leader R.C. 2151.421(A)(4) (claims arising on and after 10/6/09) [Rev. 8-19-09]
-----------	---

---

### **Chapter CV 409    ANIMALS**

---

CV 409.01	Liability of owner of dog
CV 409.03	Affirmative defenses
CV 409.05	Liability of owner of wild animal
CV 409.07	Liability of owner of domestic animal [Rev. 9/15/18]

---

### **Chapter CV 411    AUTOMOBILES [Rev. 12/6/13]**

---

CV 411.01	Negligence distinguished from negligence as a matter of law [Rev.12/6/14]
CV 411.03	Failure to comply with the order or signal of police officer [Rev. 12/6/14]
CV 411.05	Emergency vehicles going past red or stop signal R.C. 4511.03 [Rev. 12/6/14]
CV 411.07	Rules on private property R.C. 4511.08 [Rev. 12/6/14]
CV 411.09	Traffic control devices; signals R.C. 4511.12 [Rev. 12/6/14]
CV 411.11	Changing signal lights R.C. 4511.13 [Rev. 12/6/14]
CV 411.13	Operation in willful or wanton disregard of the safety of persons or property R.C. 4511.20 [Rev. 12/6/14]
CV 411.15	Reasonable control of vehicle R.C. 4511.202 [Rev. 12/6/14]
CV 411.17	Speed R.C. 4511.21 [Rev. 12/6/14]
CV 411.19	Assured clear distance R.C. 4511.21 [Rev. 12/6/14]
CV 411.21	Failure to drive on right side of roadway R.C. 4511.25 [Rev. 12/6/14]
CV 411.23	Street racing R.C. 4511.251 [Rev. 12/6/14]
CV 411.25	Vehicles traveling in opposite directions R.C. 4511.26 [Rev. 12/6/14]
CV 411.27	Overtaking and passing R.C. 4511.27 [Rev. 12/6/14]
CV 411.29	Failure to give right of way by overtaken vehicle R.C. 4511.27 [Rev. 12/6/14]
CV 411.31	Driving left of center line R.C. 4511.29 [Rev. 12/6/14]
CV 411.33	Hazardous zones R.C. 4511.31 [Rev. 12/6/14]
CV 411.35	One-way highways R.C. 4511.32 [Rev. 12/6/14]
CV 411.37	Driving in marked lanes R.C. 4511.33 [Rev. 12/6/14]
CV 411.39	Space between moving vehicles R.C. 4511.34 [Rev. 12/6/14]
CV 411.41	Divided highways R.C. 4511.35 [Rev. 12/6/14]
CV 411.43	Turns at intersections R.C. 4511.36 [Rev. 12/6/14]
CV 411.45	U turn prohibited; turning in roadway R.C. 4511.37 [Rev. 12/6/14]
CV 411.47	Starting and backing R.C. 4511.38 [Rev. 12/6/14]
CV 411.49	Signals for turning R.C. 4511.39 [Rev. 12/6/14]
CV 411.51	Right of way; general [Rev. 12/6/14]



---

## *Volume 1 Table of Contents*

- CV 411.53 Stopping at sidewalks in business or residence district R.C. 4511.431 *[Rev. 12/6/14]*
- CV 411.55 Pedestrians on sidewalk R.C. 4511.441 *[Rev. 12/6/14]*
- CV 411.57 Public safety vehicles—duty of others R.C. 4511.452 *[Rev. 12/6/14]*
- CV 411.59 Right of way when entering highway from other than roadway R.C. 4511.44 *[Rev. 12/6/14]*
- CV 411.61 Right of way of pedestrian R.C. 4511.46 *[Rev. 12/6/14]*
- CV 411.63 Blind persons R.C. 4511.47 *[Rev. 12/7/14]*
- CV 411.65 Traveling on outside of vehicle R.C. 4511.51 *[Rev. 12/6/14]*
- CV 411.67 Parking on highways R.C. 4511.66 *[Rev. 12/6/14]*
- CV 411.69 Unsafe vehicle R.C. 4513.02 *[Rev. 12/6/14]*
- CV 411.71 Failure to display lights or illuminating devices R.C. 4513.03 *[Rev. 12/6/14]*
- CV 411.73 Automobile affirmative defenses *[Rev. 12/6/14]*
- CV 411.75 Liability of owner of vehicle (negligent entrustment) *[Rev. 4/28/18]*
- CV 411.77 Liability of owner present in vehicle but not the operator *[Rev. 4/28/18]*
- CV 411.79 Liability of parent/guardian/other responsible person *[Rev. 4/28/18]*

---

### **Chapter CV 413 INTOXICANTS**

- CV 413.01 Introduction *[Rev. 12/10/16]*
- CV 413.03 On-premises liability of permit holder or employee R.C. 4399.18 *[Rev. 12/10/16]*
- CV 413.05 Off-premises liability of permit holder or employee R.C. 4399.18 *[Rev. 12/10/16]*
- CV 413.07 Liability Under Civil Damages Act R.C. 4399.01 *[Rev. 12/10/16]*
- CV 413.09 Liability of social provider to third person *[Rev. 12/10/16]*
- CV 413.11 Damages *[Rev. 12/10/16]*
- CV 413.13 Liability of social provider to a minor *[Rev. 12/10/16]*

---

### **Chapter CV 415 INNKEEPERS**

- CV 415.01 Inn defined
- CV 415.03 Guest defined
- CV 415.05 Liability for loss of guest's property
- CV 415.07 Proof of loss makes prima facie case
- CV 415.09 Loss of goods after checkout
- CV 415.11 Negligence of guest

---

### **Chapter CV 417 MEDICAL NEGLIGENCE**

- CV 417.01 Introduction *[Rev. 3/17/18]*
- CV 417.03 Standards of care: physician/surgeon *[Rev. 5/7/16]*

## *Volume 1 Table of Contents*

- CV 417.05    Res ipsa loquitor *[Rev. 5/7/16]*
- CV 417.07    Common law lack of informed consent: physician/surgeon *[Rev. 5/7/16]*
- CV 417.09    Statutory defense, lack of informed consent: physician/surgeon R.C. 2317.54  
*[Rev. 5/7/16]*
- CV 417.11    Employees and agents: physician/surgeon *[Rev. 5/7/16]*
- CV 417.13    Affirmative defense: patient negligence *[Rev. 5/7/16]*
- CV 417.15    Hospitals *[Rev. 5/7/16]*
- CV 417.17    Loss of less-than-even chance of survival/recovery *[Rev. 2/27/21]*
- CV 417.19    Interrogatories (claims arising on and after 4/11/03) *[Rev. 2/27/21]*
- CV 417.21    Verdict forms *[Rev. 5/7/16]*

---

### **Chapter CV 419      PHARMACISTS**

---

- CV 419.01            Standard of care: pharmacist *[Rev. 5/2/15]*

---

### **Chapter CV 421      OTHER PROFESSIONAL NEGLIGENCE**

---

- CV 421.01    Introduction *[Rev. 3/5/16]*
- CV 421.03    Standard of Care *[Rev. 3/5/16]*
- CV 421.05    Affirmative defense: client negligence *[Rev. 3/5/16]*
- CV 421.07    Interrogatories (claims arising on and after 4/9/2003) *[Rev. 2/27/21]*

---

### **Chapter CV 423      AGENCY**

---

- CV 423.01            Agency: contracts *[Rev. 11/17/18]*
- CV 423.03            Agency: torts *[Rev. 11/17/18]*
- CV 423.05            Joint venture *[Rev. 11/17/18]*
- CV 423.07            Independent contractor *[Rev. 11/17/18]*

---

### **Chapter CV 425      GOVERNMENTAL LIABILITY**

---

- CV 425.01            Negligent operation of motor vehicles R.C. 2744.02(B)(1) (modifying  
former R.C. 701.02)
- CV 425.03            Negligence in proprietary functions
- CV 425.05            Maintenance of roads and bridges
- CV 425.07            Negligence within government buildings or grounds R.C. 2744.02(B)(4)  
(no counterpart in former statute)
- CV 425.09            Civil liability expressly imposed by a Revised Code section R.C.  
2744.02(B)(5) (claims arising on and after 9/29/07) *[Rev. 2/24/18]*
- CV 425.11            Defenses—immunities R.C. 2744.03 *[Rev. 2/24/18]*
- CV 425.13            Statute of limitations R.C. 2744.04
- CV 425.15            Damages OJI-CV Chapter 315



## *Volume 1 Table of Contents*

---

### **Chapter CV 427      WORKERS' COMPENSATION R.C. 4123.01 *et seq.***

---

CV 427.01      Workers' compensation *[Rev. 8/5/15]*

---

### **Chapter CV 429      ASSAULT, BATTERY, INFLICTION OF SERIOUS EMOTIONAL DISTRESS**

---

CV 429.01      Civil assault *[Rev. 8-16-06]*

CV 429.03      Battery *[Rev. 8-16-06]*

CV 429.05      Intentional infliction of serious emotional distress *[Rev. 12-11-05]*

CV 429.07      Negligent infliction of serious emotional distress

CV 429.09      Intentional tort claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*

CV 429.11      Intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*

---

### **Chapter CV 431      DEFAMATION**

---

CV 431.01      Public official, public figure or limited purpose public figure *[Rev. 9-13-03]*

CV 431.03      Private figure involving both public and private issues *[Rev. 9-13-03]*

CV 431.05      Private figure in matters concerning labor dispute or when qualified privilege applies *[Rev. 9-13-03]*

CV 431.07      Damages *[Rev. 9-13-03]*

---

### **Chapter CV 433      INVASION OF PRIVACY**

---

CV 433.01      Intrusion upon seclusion of another *[Rev. 11/7/20]*

CV 433.03      Public disclosure of embarrassing private facts *[Rev. 11/7/20]*

CV 433.05      Publicity placing a person in false light *[Rev. 11/7/20]*

CV 433.07      Appropriation of name or likeness *[Rev. 11/7/20]*

CV 433.09      Right of publicity in individual's persona (claims arising on and after 11/22/99) *[Rev. 11/7/20]*

---

### **Chapter CV 435      ABUSE OF PROCESS**

---

CV 435.01      Abuse of process *[Rev. 2-16-13]*

---

### **Chapter CV 437      SPOLIATION**

---

CV 437.01      Spoliation (Destruction of evidence) *[Rev. 9/14/19]*

---

## *Volume 1 Table of Contents*

---

### **Chapter CV 439      MALICIOUS PROSECUTION**

---

CV 439.01	Malicious civil prosecution <i>[Rev. 2-16-13]</i>
CV 439.03	Malicious criminal prosecution <i>[Rev. 2-16-13]</i>
CV 439.05	Unfair competition by malicious litigation <i>[Rev. 8/14/13]</i>

---

### **Chapter CV 441      FALSE ARREST**

---

CV 441.01	False arrest <i>[Rev. 2/1/20]</i>
-----------	-----------------------------------

---

### **Chapter CV 443      CIVIL CONSPIRACY**

---

CV 443.01	Civil conspiracy <i>[Rev. 12-1-07]</i>
-----------	--

---

### **Chapter CV 445      RICO**

---

CV 445.01	Civil action; introduction
CV 445.03	Conducting or participating in the affairs of an enterprise; essential elements; burden of proof
CV 445.05	Conducting or participating in the affairs of an enterprise; essential elements; definitions <i>[Rev. 10/3/15]</i>
CV 445.07	Conducting or participating in the affairs of an enterprise; causation and damages
CV 445.09	Acquiring or maintaining an interest in an enterprise or real property; essential elements; burden of proof
CV 445.11	Acquiring or maintaining an interest in an enterprise or real property; essential elements; definitions
CV 445.13	Acquiring or maintaining an interest in an enterprise or real property; causation and damages
CV 445.15	Use or investment of proceeds in the acquisition of real property, or establishment or operation of an enterprise; essential elements; burden of proof
CV 445.17	Use or investment of proceeds in the acquisition of real property, or establishment or operation of an enterprise; essential elements; definitions
CV 445.19	Use or investment of proceeds in the acquisition of real property, or establishment or operation of an enterprise; causation and damages
CV 445.21	Conspiracy to engage in a pattern of corrupt activity or the collection of an unlawful debt; essential elements; burden of proof
CV 445.23	Conspiracy to engage in a pattern of corrupt activity or the collection of an unlawful debt; essential elements; definitions
CV 445.25	Conspiracy to engage in a pattern of corrupt activity or the collection of an unlawful debt; causation and damages

---

### **Chapter CV 447      CONCEALED OR EMBEZZLED ASSETS**

---

CV 447.01	Complaint, definitions, defenses, conclusion
-----------	--



---

## Volume 1 Table of Contents

---

### Chapter CV 449 FRAUD

---

CV 449.01	Introduction; fraud defined
CV 449.03	Elements of fraud
CV 449.05	Types of representations not fraudulent
CV 449.07	Expert expressions of opinion
CV 449.09	Duty to investigate, inspect
CV 449.11	Duty to speak—partial disclosure
CV 449.13	<i>Caveat emptor</i> in real estate sales
CV 449.15	Damages
CV 449.17	Conclusion

---

### Chapter CV 450 ADULTERATED FOOD, COSMETICS AND DRUGS

---

CV 450.01	Adulterated Food [Rev. 5-7-11]
-----------	--------------------------------

---

### Chapter CV 451 PRODUCT LIABILITY

---

CV 451.01	Statutory product liability [Rev. 5-7-11]
CV 451.03	Statutory defect in manufacture or construction R.C. 2307.74 [Rev. 5-7-11]
CV 451.05	Statutory defect in design or formulation R.C. 2307.75 [Rev. 5-7-11]
CV 451.07	Statutory failure to warn R.C. 2307.76 [Rev. 5-7-11]
CV 451.09	Statutory non-conformance to representation R.C. 2307.77 [Rev. 12-13-03]
CV 451.11	Common law negligent design (claims arising before April 7, 2005) [Rev. 1-21-06]
CV 451.13	Common law negligent construction or manufacture (for claims arising before April 7, 2005) [Rev. 1-21-06]
CV 451.15	Common law negligent failure to warn by a manufacturer or supplier (for claims arising before April 7, 2005) [Rev. 1-21-06]
CV 451.17	Common law breach of implied warranty [Rev. 1-21-06]
CV 451.19	Affirmative defenses [Rev. 1-21-06]
CV 451.21	Damages [Rev. 2-23-08]
CV 451.23	Interrogatories (claims arising on and after 4/9/03) [Rev. 2/27/21]

---

### Chapter CV 453 TORTIOUS INTERFERENCE WITH ECONOMIC RELATIONS

---

CV 453.01	Tortious interference with business relations [Rev. 2-23-08]
CV 453.03	Tortious interference with contractual relations [Rev. 2-23-08]
CV 453.05	Tortious interference with employment relations [Rev. 2-23-08]
CV 453.07	Tortious interference with expectancy of inheritance [Rev. 12-5-09]

---

## *Volume 1 Table of Contents*

---

### **Chapter CV 455      CIVIL RELIEF FOR CRIMINAL CONDUCT**

---

CV 455.01              Civil remedy for person injured by criminal act *[Rev. 10/13/18]*

---

### **Chapter CV 457      UNAUTHORIZED DISCLOSURE OF MEDICAL INFORMATION**

---

CV 457.01              Unauthorized disclosure of nonpublic medical information *[Rev. 10/5/19]*

CV 457.03              Inducement of unauthorized disclosure of nonpublic medical information  
*[Rev. 10/5/19]*

### **TITLE 5              CIVIL SUBJECT MATTER INSTRUCTIONS: CONTRACT-RELATED ISSUES**

---

### **Chapter CV 501      CONTRACTS**

---

CV 501.01              Plaintiff's claim

CV 501.03              Contract formation

CV 501.05              Offer and acceptance

CV 501.07              Contract interpretation

CV 501.09              Modification of contract *[Rev. 1/20/18]*

CV 501.11              Affirmative defense: mutual mistake of fact

CV 501.13              Affirmative defense: unilateral mistake of fact

CV 501.15              Affirmative defense: frustration of purpose

CV 501.17              Affirmative defense: impracticability

CV 501.19              Affirmative defense: impracticability due to government action

CV 501.21              Affirmative defense: prevention of performance

CV 501.23              Affirmative defense: payment (satisfaction)

CV 501.25              Affirmative defense: accord and satisfaction *[Rev. 2-24-07]*

CV 501.27              Affirmative defense: waiver *[Rev. 1/20/18]*

CV 501.29              Affirmative defense: duress *[Rev. 4/28/18]*

CV 501.31              Promissory estoppel *[Rev. 2-21-09]*

CV 501.33              Expectation damages *[Rev. 3-28-09]*

CV 501.35              Reliance damages

CV 501.37              Rescission and restitution

CV 501.39              Quantum meruit: mistake/implied in fact contract

---

### **Chapter CV 505      UNIFORM COMMERCIAL CODE [SALES]**

---

#### **I.    FORMATION OF THE CONTRACT**

CV 505.01              Contract formation R.C. 1302.07

CV 505.03              Contract formed by conduct of the parties R.C. 1302.07

CV 505.05              Open price term R.C. 1302.18

CV 505.07              Additional terms in confirmation or acceptance R.C. 1302.10

CV 505.09              Modification, rescission, and waiver R.C. 1302.12



## *Volume 1 Table of Contents*

### II. WARRANTIES; CREATION AND EXCLUSION

CV 505.11	Express warranties R.C. 1302.26
CV 505.13	Implied warranty; merchantability; usage of trade R.C. 1302.27 [ <i>Rev. 5-7-11</i> ]
CV 505.15	Implied warranty; fitness for a particular purpose R.C. 1302.28 [ <i>Rev. 5-7-11</i> ]
CV 505.17	Exclusion or modification of express warranties R.C. 1302.29(A)
CV 505.19	Exclusion or modification of implied warranties R.C. 1302.29(B) and (C)

### III. OBLIGATIONS OF THE PARTIES

CV 505.21	Tender of payment by buyer R.C. 1302.55
CV 505.23	Tender of delivery by seller R.C. 1302.51

### IV. SELLER'S REMEDIES

CV 505.25	Seller's resale remedy R.C. 1302.80
CV 505.27	Seller's damages for non-acceptance or repudiation R.C. 1302.82
CV 505.29	Seller's action for the price R.C. 1302.83
CV 505.31	Seller's incidental damages R.C. 1302.84
CV 505.33	Limitation of seller's remedies R.C. 1302.93

### V. BUYER'S REMEDIES

CV 505.35	Buyer's rejection R.C. 1302.60
CV 505.37	Buyer's acceptance of the goods R.C. 1302.64
CV 505.39	Buyer's revocation of acceptance R.C. 1302.66
CV 505.41	Buyer's obligations after revocation of acceptance R.C. 1302.61, 1302.66
CV 505.43	Buyer's damages for nondelivery, repudiation, rejection, and revocation of acceptance R.C. 1302.87
CV 505.45	Buyer's damages for breach of warranty of accepted goods R.C. 1302.88(B)
CV 505.47	Buyer's notice of breach; accepted goods R.C. 1302.65
CV 505.49	Buyer's "cover" damages R.C. 1302.86
CV 505.51	Buyer's incidental and consequential damages R.C. 1302.89
CV 505.53	Limitation of buyer's remedies R.C. 1302.93

---

### **Chapter CV 509      GUARANTY**

---

CV 509.01	Definitions (New)
CV 509.03	Liability (New)
CV 509.05	Affirmative defenses (New)
CV 509.07	Damages OJI-CV 501.33, OJI-CV 501.35

## *Volume 1 Table of Contents*

---

### **Chapter CV 513     SURETIES**

---

CV 513.01	Liability of sureties on bond of agent
CV 513.03	Contract strictly construed
CV 513.05	Agreement to extend time
CV 513.07	Contribution
CV 513.09	Revival of liability

---

### **Chapter CV 517     UNIFORM COMMERCIAL CODE [SECURED TRANSACTIONS]**

---

CV 517.01	Buyer in the ordinary course of business R.C. 1301.01(I) [UCC § 1-201(9)] [ <i>Rev. 2-24-07</i> ]
CV 517.03	Description of collateral R.C. 1309.108 [UCC § 9-108] [ <i>Rev. 2-24-07</i> ]
CV 517.05	Enforceability of security interest R.C. 1309.203 [UCC § 9-203] [ <i>Rev. 2-24-07</i> ]
CV 517.07	Collateral in possession of secured party R.C. 1309.207 [UCC § 9-207] [ <i>Rev. 2-24-07</i> ]
CV 517.09	Perfection of security interest by possession R.C. 1309.313 [UCC § 9-313] [ <i>Rev. 2-24-7</i> ]
CV 517.11	Accessions R.C. 1309.335 [UCC § 9-335] [ <i>Rev. 2-24-07</i> ]
CV 517.13	Commingled and processed goods R.C. 1309.336 [UCC § 9-336] [ <i>Rev. 2-24-07</i> ]
CV 517.15	Right of secured party to take possession R.C. 1309.609 [UCC § 9-609] [ <i>Rev. 2-24-07</i> ]
CV 517.17	Disposition of collateral after default R.C. 1309.610 [UCC § 9-610] [ <i>Rev. 2-24-07</i> ]

---

### **Chapter CV 521     CONSUMER SALES PRACTICES ACT**

---

CV 521.01	Consumer Sales Practices Act—R.C. 1345.01-1345.13 [ <i>Rev. 12-1-07</i> ]
CV 521.03	Consumer Sales Practices Act: illegal rebates or discounts R.C. 1345.01-1345.02(D) [ <i>Rev. 12-1-07</i> ]

---

### **Chapter CV 525     RESIDENTIAL LENDING PRACTICES**

---

CV 525.01	Certificate of registration to act as mortgage broker; license to act as loan officer; exemptions R.C. 1322.02 [ <i>Rev. 10-11-08</i> ]
CV 525.03	Failure to provide required information R.C. 1322.062 [ <i>Rev. 10-11-08</i> ]
CV 525.05	Failure of a registrant to deliver tax and payment disclosures R.C. 1322.063 [ <i>Rev. 10-11-08</i> ]
CV 525.07	Failure to provide timely disclosure of material changes in terms R.C. 1322.064 [ <i>Rev. 10-11-08</i> ]
CV 525.09	Prohibited conduct R.C. 1322.07 [ <i>Rev. 10-11-08</i> ]
CV 525.11	Document retention, fee premiums, referral fees, and kickbacks R.C. 1322.071 [ <i>Rev. 10-11-08</i> ]



## *Volume 1 Table of Contents*

CV 525.13	Improper payment of fees to a mortgage broker R.C. 1322.08 [ <i>Rev. 10-16-08</i> ]
CV 525.15	Unlawful lending practices by a loan officer or mortgage broker R.C. 1322.081 [ <i>Rev. 10-16-08</i> ]
CV 525.17	Failure to include registration number on advertisements R.C. 1322.09 [ <i>Rev. 10-16-08</i> ]
CV 525.19	Damages R.C. 1322.11 [ <i>Rev. 10-16-08</i> ]
CV 525.21	Violations by title insurance agents R.C. 3953.35 [ <i>Rev. 10-16-08</i> ]
CV 525.23	Unconscionable acts in connection with residential mortgages R.C. 1345.031 [ <i>Rev. 10-11-08</i> ]

---

<b>Chapter CV 529</b>	<b>NONCONFORMING MOTOR VEHICLE (LEMON LAW)</b>
-----------------------	--

---

CV 529.01	Nonconforming motor vehicle (Lemon Law) R.C. 1345.71 et seq. [ <i>Rev. 8-20-08</i> ]
-----------	--

---

<b>Chapter CV 533</b>	<b>DISCRIMINATION</b>
-----------------------	-----------------------

---

CV 533.01	General [ <i>Rev. 3-22-03</i> ]
CV 533.03	Disparate treatment claim—indirect evidence [ <i>Rev. 3-22-03</i> ]
CV 533.05	Disparate treatment claim—some direct evidence [ <i>Rev. 3-22-03</i> ]
CV 533.07	Disparate (adverse) impact claim [ <i>Rev. 3-22-03</i> ]
CV 533.09	Affirmative defense—job related business necessity [ <i>Rev. 3-22-03</i> ]
CV 533.11	Disability discrimination [ <i>Rev. 2-21-09</i> ]
CV 533.13	Reasonable accommodation [ <i>Rev. 3-22-03</i> ]
CV 533.15	Sexual harassment-loss of tangible job benefit [ <i>Rev. 3-28-09</i> ]
CV 533.17	Sexual harassment-hostile work environment [ <i>Rev. 3-28-09</i> ]
CV 533.19	Retaliation [ <i>Rev. 3-22-03</i> ]
CV 533.21	Additional affirmative defenses [ <i>Rev. 3-22-03</i> ]
CV 533.23	Constructive discharge [ <i>Rev. 3-22-03</i> ]
CV 533.25	Damages in discrimination cases [ <i>Rev. 3-22-03</i> ]

---

<b>Chapter CV 537</b>	<b>EMPLOYMENT RELATIONS</b>
-----------------------	-----------------------------

---

CV 537.01	Contract of employment [ <i>Rev. 12/7/19</i> ]
CV 537.03	Contract of employment—promissory estoppel [ <i>Rev. 12/7/19</i> ]
CV 537.05	Liability to third parties: contracts [ <i>Rev. 12/7/19</i> ]
CV 537.07	Liability to third parties: torts [ <i>Rev. 12/7/19</i> ]
CV 537.09	Employer intentional tort: employee injury, disease, condition, or death [ <i>Rev. 12/7/19</i> ]
CV 537.11	Trade secrets [ <i>Rev. 6/27/20</i> ]
CV 537.13	Labor-management disputes [ <i>Rev. 12/7/19</i> ]
CV 537.15	Liability to employees: breach of contract and duty of fair representation [ <i>Rev. 12/7/19</i> ]

---

## Volume 1 Table of Contents

CV 537.17            Wrongful discharge; public policy tort [*Rev. 12/7/19*]

---

### Chapter CV 541    SECURITIES

---

CV 541.01           Civil liability of seller for fraud R.C. 1707.41 [*Rev. 1-23-10*]  
CV 541.03           Civil liability of adviser R.C. 1707.42(A) [*Rev. 1-23-10*]  
CV 541.05           Civil liability of investment adviser or investment adviser representative  
                         R.C. 1707.42(B) [*Rev. 1-23-10*]  
CV 541.07           Prohibited conduct R.C. 1707.44 [*Rev. 1-23-10*]  
CV 541.09           Common law claims for relief [*Rev. 8-11-10*]

### TITLE 6            CIVIL MATTER INSTRUCTIONS: PROPERTY-RELATED ISSUES

---

### Chapter CV 601    REAL ESTATE

---

CV 601.01           Ejectment  
CV 601.03           Adverse Possession    [*Rev. 9-13-03*]  
CV 601.05           Trespass  
CV 601.07           Adjoining Owners  
CV 601.09           Easements

---

### Chapter CV 605    BROKERS

---

CV 605.01           Broker's commission  
CV 605.03           Acting for both parties  
CV 605.05           Failure of transaction  
CV 605.07           Broker's abandonment  
CV 605.09           Broker's duty to seller

---

### Chapter CV 609    EMINENT DOMAIN

---

CV 609.01           Preliminary instructions  
CV 609.03           View of property  
CV 609.05           Compensation  
CV 609.07           Issues concerning potential use  
CV 609.09           Damages  
CV 609.11           Structures removed prior to trial  
CV 609.13           Easements  
CV 609.15           Fixtures  
CV 609.17           Natural assets  
CV 609.19           Special use property  
CV 609.21           Conclusion  
CV 609.23           Verdict [*Rev. 11/7/20*]



---

## Volume 1 Table of Contents

---

### Chapter CV 613 LANDLORDS, TENANTS

---

CV 613.01	Residential eviction (non-payment of rent) R.C. 1923.02
CV 613.03	Residential eviction (breach of tenant obligation) R.C. 5321.05
CV 613.05	Residential eviction (illegal drug activity) R.C. 5321.04(A)(9) and R.C. 5321.05(A)(9)
CV 613.07	Return of security deposit R.C. 5321.16
CV 613.09	Manufactured home park eviction (retaliatory conduct of park operator) R.C. 3733.09
CV 613.11	Affirmative defense to manufactured home park eviction (retaliatory conduct of park operator) R.C. 3733.09
CV 613.13	Manufactured home park eviction (non-payment of rent) R.C. 3733.091(A)(1)
CV 613.15	Resident's claim for damages (violation of obligation of park operator) R.C. 3733.10
CV 613.17	Manufactured home park operator's claim for damages (violation of statutory obligations of resident) R.C. 3733.10.1
CV 613.19	Manufactured home park eviction (termination of term resulting from sale of park) R.C. 3733.11
CV 613.21	Manufactured home park eviction (owner holding over term) R.C. 3733.11
CV 613.23	Manufactured home park eviction (tenant holding over term) R.C. 5321.17
CV 613.25	Resident's claim for damages (prohibited conduct of park operator) R.C. 3733.11(B)
CV 613.27	Manufactured home park eviction (first violation of rules of park, health council or health and safety code) R.C. 3733.13
CV 613.29	Manufactured home park eviction (second violation of rules of park, health council or health and safety code) R.C. 3733.13
CV 613.31	Resident's claim for damages (illegal acts of park operator to recover rent or possession of premises) R.C. 3733.17
CV 613.33	Resident's claim for return of security deposit R.C. 3733.18

---

### Chapter CV 617 PREMISES LIABILITY

---

CV 617.01	General <i>[Rev. 12/14/02]</i>
CV 617.03	Invitee; business visitor <i>[Rev. 1-22-11]</i>
CV 617.05	Social guest <i>[Rev. 12/14/02]</i>
CV 617.07	Fire/police personnel <i>[Rev. 12-14-02]</i>
CV 617.09	Licensee and trespasser <i>[Rev. 12/14/02]</i>
CV 617.11	Frequenter <i>[Rev. 12/14/02]</i>
CV 617.13	Recreational user <i>[Rev. 12/14/02]</i>
CV 617.15	Landlord liability (no duty - conditions arising after transfer of possession) <i>[Rev. 12/14/02]</i>

---

## *Volume 1 Table of Contents*

CV 617.17	Landlord liability (no duty—conditions existing at transfer of possession) [Rev. 12/14/02]
CV 617.19	Landlord liability (legal duty) [Rev. 3/15/14]
CV 617.21	Tenant liability [Rev. 12/14/02]

---

### **Chapter CV 621     NUISANCE**

---

CV 621.01	Absolute nuisance—statutory violation [Rev. 3-18-02]
CV 621.03	Absolute nuisance—abnormally dangerous activity [Rev. 3-18-02]
CV 621.05	Absolute nuisance—intentional acts [Rev. 3-18-02]
CV 621.07	Qualified nuisance [Rev. 3-18-02]
CV 621.09	Regulated activity [Rev. 3-18-02]
CV 621.11	Coming to the nuisance [Rev. 3-18-02]
CV 621.13	Compensatory damages [Rev. 1-22-11]

---

### **Chapter CV 625     CONVERSION**

---

CV 625.01	Definition
CV 625.03	Accrual of action
CV 625.05	By mortgagee
CV 625.07	Abandonment as a defense

---

### **Chapter CV 629     BAILMENTS**

---

CV 629.01	Definitions: duty to return; duty of care
CV 629.03	Bailment by agreement: prima facie case

---

### **Chapter CV 633     WILLS**

---

CV 633.01	Validity of will or codicil [Rev. 11/7/20]
CV 633.03	Sound mind and memory [Rev. 11/7/20]
CV 633.05	Under (undue) (improper) influence defined [Rev. 11/7/20]
CV 633.07	Fraud [Rev. 11/7/20]
CV 633.09	Additional considerations regarding bequests [Rev. 11/7/20]
CV 633.11	Revocation [Rev. 11/7/20]
CV 633.13	Verdict [Rev. 11/7/20]

---

### **Chapter CV 637     GIFTS**

---

CV 637.01	Definition
CV 637.03	Acceptance by donee presumed
CV 637.05	Essentials of a valid gift
CV 637.07	Clear and convincing proof required
CV 637.09	Gift of mortgage or money represented by mortgage



---

## *Volume 1 Table of Contents*

CV 637.11            Gift upon condition of return

### **TITLE 7                    CIVIL SUBJECT MATTER INSTRUCTIONS: MISCELLANEOUS**

---

#### **Chapter CV 701        HUSBAND AND WIFE**

---

CV 701.01            Liability of husband for support  
CV 701.03            Burden of proof; necessities  
CV 701.05            Proof of adultery  
CV 701.07            Husband not unconditionally liable for necessities  
CV 701.09            Liability of husband for negligence of wife  
CV 701.11            Necessaries  
CV 701.13            Goods purchased on husband's credit  
CV 701.15            Determination of heirs; common-law marriage

---

#### **Chapter CV 705        PATERNITY**

---

CV 705.01            Issues  
CV 705.03            Presumption of paternity complainant other than defendant R.C.  
3111.03(A)  
CV 705.05            Presumption of paternity presumptive person—defendant R.C.  
3111.03(B)  
CV 705.07            Serological tests  
CV 705.09            Exhibit child  
CV 705.11            Parties competent to testify  
CV 705.13            Conclusion and verdicts  
CV 705.15            Jury's duty

---

#### **Chapter CV 709        INSURANCE**

---

CV 709.01            Proof of loss or waiver  
CV 709.03            Time of proof of loss  
CV 709.05            Proofs, limited purpose  
CV 709.07            "Earliest practical moment"  
CV 709.09            Vacant and unoccupied  
CV 709.11            Arson  
CV 709.13            Loss from fire or explosion  
CV 709.15            Total loss  
CV 709.17            False representation  
CV 709.19            Insurable interest  
CV 709.21            Insurance on steamboat  
CV 709.23            Chimney fire  
CV 709.25            Burden on plaintiff to prove accidental injury  
CV 709.27            Accident or disease

---

## Volume 1 Table of Contents

CV 709.29	Death from accident or disease
CV 709.31	Accidental means
CV 709.33	Burden; death by accidental means
CV 709.35	Voluntary exposure to unnecessary danger
CV 709.37	Exempted risk
CV 709.39	Intoxicating liquor
CV 709.41	“Theft” defined
CV 709.43	Beneficiary intended
CV 709.45	Burden of proving unsound health upon defendant
CV 709.47	Sound health
CV 709.49	Presumption of sanity
CV 709.51	Burden upon defendant to clearly prove false answer material
CV 709.53	Good health
CV 709.55	Fraud of insurance agent
CV 709.57	Total disability—loss of arm
CV 709.59	Total disability defined
CV 709.61	Total and permanent disability
CV 709.63	Supplemental action
CV 709.65	Bad faith—refusal to pay or delay in paying insurance claim [ <i>Rev. 12/6/08</i> ]

---

### Chapter CV 713      CIVIL RIGHTS

---

CV 713.01	Deprivation of rights—42 U.S.C. § 1983
-----------	--

---

### GENERAL INDEX

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- Anderson's Ohio School Law Guide
- Anderson's Ohio School Law Manual
- Anderson's Ohio School Finance
- Rapp, Education Law

#### **Environmental Law**

- Anderson's OhioEPA Laws and Regulations with CD-ROM
- Environmental Law Practice Guide
- Brownfields Law and Practice
- Grad, Treatise on Environmental Law



## **Elder, Estate, Gift and Trust Law**

- Anderson's Ohio Probate Law Handbook
- Anderson's Ohio Probate Practice and Procedure
- Anderson's The Simple Will in Ohio
- Anderson's Ohio Elder Law Practice Manual
- Modern Estate Planning
- Tax, Estate & Financial Planning for the Elderly
- Murphy's Will Clauses: Annotations and Forms with Tax Effects

## **Evidence**

- Weissenberger's Ohio Evidence Treatise
- Weissenberger's Ohio Evidence Courtroom Manual
- Weinstein's Federal Evidence

## **Family Law**

- Anderson's Ohio Family Law Handbook
- Anderson's Ohio Juvenile Law Handbook
- Anderson's Ohio Family Law
- Anderson's Ohio Domestic Relations Practice Manual
- Family Law & Practice
- Lindey & Parley on Separation Agreements & Antenuptial Contracts 2d Ed.

## **Forms**

- Anderson's Ohio Online Forms
- Anderson's Ohio Forms on CD-ROM
- Ohio Forms of Pleading and Practice
- Ohio Forms of Pleading and Practice on CD-ROM
- Ohio Transaction Guide
- Ohio Transaction Guide on CD-ROM
- Couse's Ohio Form Book
- Anderson's Legal Forms

## **Insurance Law**

- Anderson's Ohio Insurance Law Handbook
- Appleman on Insurance
- Law of Liability Insurance
- Law of Life and Health Insurance

## **Jury Instructions**

- Ohio Jury Instructions
- Ohio Jury Instructions on CD-ROM

## **Labor & Employment Law**

- Anderson's Ohio Employment Law Handbook
- Employment in Ohio: A Guide to Employment Laws, Regulations and Practice

- Labor and Employment Law
- Larson on Employment Discrimination

### **Personal Injury**

- Damages in Tort Actions
- Medical Malpractice
- Personal Injury: Actions, Defenses, Damages

### **Real Estate Law**

- Anderson's Ohio Real Estate Law Handbook
- Anderson's Ohio Residential Real Estate Manual
- Ohio Real Property Law and Practice
- Construction Law
- Nichols on Eminent Domain
- Powell on Real Property

### **Securities Law**

- Anderson's Ohio Securities Law Handbook
- Anderson's Ohio Securities Law and Practice
- Anderson's Ohio Investment Adviser Manual
- Blue Sky Regulation
- Federal Securities Act of 1933
- Federal Securities Exchange Act of 1934
- Investment Advisers: Law and Compliance
- Securities Law Techniques

### **Shepard's**

- Shepard's Ohio Citations

### **Tax Law**

- Anderson's Ohio Tax Law Handbook
- Federal Income Taxation of Corporations Filing Consolidated Returns
- Federal Tax Practice & Procedure
- How to Save Time & Taxes Preparing Fiduciary Income Tax Returns

### **Workers' Compensation and SSDI**

- Anderson's Ohio Workers' Compensation Law Handbook
- Fulton's Ohio Workers' Compensation Law
- Larson's Workers' Compensation, Desk Edition
- Social Security Practice Guide



## CIVIL INSTRUCTIONS CORRELATION TABLE

Previous Instruction Number	New Edition Instruction Number
1.01	OJI-CV 101.01
1.03	OJI-CV 101.03
1.05	OJI-CV 101.05
1.07	OJI-CV 101.07
1.09	OJI-CV 101.09
1.11	OJI-CV 101.11
1.13	OJI-CV 101.13
1.15	OJI-CV 101.15
1.17	OJI-CV 101.17
1.19	OJI-CV 101.19
1.21	OJI-CV 101.21
1.23	OJI-CV 101.23
1.25	OJI-CV 101.25
1.27	OJI-CV 101.27
1.29	OJI-CV 101.29
1.31	OJI-CV 101.31
1.33	OJI-CV 101.33
1.35	OJI-CV 101.35
1.37	OJI-CV 101.37
1.39	OJI-CV 101.39
1.41	OJI-CV 101.41
1.43	OJI-CV 101.43
1.45	OJI-CV 101.45
1.47	OJI-CV 101.47
1.49	OJI-CV 101.49
1.51	OJI-CV 101.51
1.53	OJI-CV 101.53
1.55	OJI-CV 101.55
1.57	OJI-CV 101.57
1.59	OJI-CV 101.59
1.61	OJI-CV 101.61
1.63	OJI-CV 101.63
1.65	OJI-CV 101.65
1.67	OJI-CV 101.67
1.69	OJI-CV 101.69
1.71	OJI-CV 101.71
1.73	OJI-CV 101.73
1.75	OJI-CV 101.75
1.77	OJI-CV 101.77
1.79	OJI-CV 101.79
1.81	OJI-CV 101.81
1.83	OJI-CV 101.83

Previous Instruction Number	New Edition Instruction Number
1.85	OJI-CV 101.85
1.87	OJI-CV 101.87
2.01	OJI-CV 301.01
2.10	OJI-CV 301.03
2.20	OJI-CV 301.05
2.21	OJI-CV 301.07
2.25	OJI-CV 309.13
2.50	OJI-CV 309.15
2.51	OJI-CV 309.17
2.52	OJI-CV 301.09
2.53	OJI-CV 301.11
2.60	OJI-CV 309.05
2.61	OJI-CV 309.19
2.62	OJI-CV 309.21
2.65	OJI-CV 309.23
2.67	OJI-CV 309.25
3.01	OJI-CV 311.01
3.05	OJI-CV 303.01
3.10	OJI-CV 303.03
3.50	OJI-CV 303.05
3.75	OJI-CV 303.07
5.10	OJI-CV 305.01
5.13	OJI-CV 309.01
5.15	OJI-CV 309.03
5.20	OJI-CV 305.03
5.30	OJI-CV 305.05
5.31	OJI-CV 309.07
5.50	OJI-CV 309.09
5.70	OJI-CV 309.11
5.92	OJI-CV 311.09
7.10	OJI-CV 401.01
7.11	OJI-CV 401.03
7.12	OJI-CV 401.05
7.13	OJI-CV 401.07
7.14	OJI-CV 401.09
7.15	OJI-CV 401.11
7.17	OJI-CV 401.13
7.18	OJI-CV 401.15
7.19	OJI-CV 401.17
7.20	OJI-CV 401.19
7.25	OJI-CV 401.21
7.26	OJI-CV 401.23
7.27	OJI-CV 401.25
7.28	OJI-CV 401.27



Previous Instruction Number	New Edition Instruction Number
7.29	OJI-CV 401.29
7.30	OJI-CV 401.31
7.35	OJI-CV 401.33
7.70	OJI-CV 401.35
7.71	OJI-CV 401.37
7.80	OJI-CV 401.39
7.90	OJI-CV 401.41
9.13 (claims arising on and after 4/9/03)	OJI-CV 403.01 (claims arising on and after 4/9/03)
9.13 (claims arising before 1/5/88)	OJI-CV 403.01 (claims arising before 1/5/88)
9.13 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.01 (claims arising on and after 1/5/88 but before 4/9/03)
9.15 (claims arising on and after 4/9/03)	OJI-CV 403.03 (claims arising on and after 4/9/03)
9.15 (claims arising before 1/5/88)	OJI-CV 403.03 (claims arising before 1/5/88)
9.15 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.03 (claims arising on and after 1/5/88 but before 4/9/03)
9.17 (claims arising on and after 4/9/03)	OJI-CV 403.05 (claims arising on and after 4/9/03)
9.17 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.05 (claims arising on and after 1/5/88 but before 4/9/03)
9.19 (claims arising on and after 4/9/03)	OJI-CV 403.07 (claims arising on and after 4/9/03)
9.19 (claims arising on and after 1/5/88 but before 4/9/03)	OJI-CV 403.07 (claims arising on and after 1/5/88 but before 4/9/03)
9.50	OJI-CV 403.09
9.60	OJI-CV 403.11
9.70	OJI-CV 403.13
11.10	OJI-CV 405.01
11.20	OJI-CV 405.03
11.30	OJI-CV 405.05
13.01	OJI-CV 617.01
13.03	OJI-CV 617.03
13.05	OJI-CV 617.05
13.07	OJI-CV 617.07
13.09	OJI-CV 617.09
13.11	OJI-CV 617.11
13.13	OJI-CV 617.13
13.15	OJI-CV 617.15
13.17	OJI-CV 617.17
13.19	OJI-CV 617.19
13.21	OJI-CV 617.21
15.10	OJI-CV 423.01

Previous Instruction Number	New Edition Instruction Number
15.11	OJI-CV 423.03
15.30	OJI-CV 423.05
15.31	OJI-CV 423.07
15.50	OJI-CV 423.09
15.51	OJI-CV 423.11
15.52	OJI-CV 423.13
15.70	OJI-CV 423.15
17.00	OJI-CV 311.03
17.05	OJI-CV 311.05
17.11	OJI-CV 311.07
17.13	OJI-CV 311.11
17.15	OJI-CV 311.13
17.16	OJI-CV 311.15
17.20	OJI-CV 311.17
17.30	OJI-CV 311.19
17.40	OJI-CV 311.21
17.50	OJI-CV 311.23
17.60	OJI-CV 311.25
17.70	OJI-CV 311.27
17.90	OJI-CV 311.29
21.10	OJI-CV 313.01
21.20	OJI-CV 313.03
21.30	OJI-CV 313.05
23.01 (claims arising before 4/9/03)	OJI-CV 315.01 (claims arising before 4/9/03)
23.01 (claims arising on and after 4/7/05)	OJI-CV 315.01 (claims arising on and after 4/7/05)
23.01 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 315.01 (claims arising on and after 4/9/03 but before 4/7/05)
23.02	OJI-CV 315.03
23.04	OJI-CV 315.05
23.05	OJI-CV 315.07
23.07	OJI-CV 315.09
23.08	OJI-CV 315.11
23.09	OJI-CV 315.13
23.10	OJI-CV 315.15
23.20	OJI-CV 315.17
23.40	OJI-CV 315.19
23.41	OJI-CV 315.21
23.42	OJI-CV 315.23
23.43	OJI-CV 315.25
23.50	OJI-CV 315.27
23.55	OJI-CV 315.29
23.56	OJI-CV 315..31



Previous Instruction Number	New Edition Instruction Number
23.57	OJI-CV 315.33
23.60	OJI-CV 315.35
23.71 (claims arising on and after 1/5/88 but before 4/7/05)	OJI-CV 315.37 (claims arising on and after 1/5/88 but before 4/7/05)
23.71 (claims arising on and after 4/7/05)	OJI-CV 315.37 (claims arising on and after 4/7/05)
23.72	OJI-CV 315.39
23.75	OJI-CV 315.41
23.76	OJI-CV 315.43
23.77	OJI-CV 315.45
23.90	OJI-CV 315.47
23.91	OJI-CV 315.49
23.92	OJI-CV 315.51
23.93	OJI-CV 315.53
25.10	OJI-CV 317.01
25.20	OJI-CV 317.03
25.30	OJI-CV 317.05
25.40	OJI-CV 317.07
27.01	OJI-CV 319.01
27.05	OJI-CV 319.03
27.10	OJI-CV 319.05
27.50	OJI-CV 319.07
200.01	OJI-CV 435.01
200.03	OJI-CV 435.03
200.05	OJI-CV 435.05
217.01	OJI-CV 409.01
217.03	OJI-CV 409.03
217.05	OJI-CV 409.05
217.07	OJI-CV 409.07
219.01	OJI-CV 429.01
219.02	OJI-CV 429.03
219.03	OJI-CV 429.05
219.05	OJI-CV 429.07
219.07	OJI-CV 429.09
219.09	OJI-CV 429.11
225.01	OJI-CV 411.01
225.02	OJI-CV 411.03
225.03	OJI-CV 411.05
225.04	OJI-CV 411.07
225.05	OJI-CV 411.09
225.07	OJI-CV 411.11
225.08	OJI-CV 411.13
225.12	OJI-CV 411.15
225.13	OJI-CV 411.17

Previous Instruction Number	New Edition Instruction Number
225.131	OJI-CV 411.19
225.14	OJI-CV 411.21
225.15	OJI-CV 411.23
225.19	OJI-CV 411.25
225.20	OJI-CV 411.27
225.201	OJI-CV 411.29
225.202	OJI-CV 411.31
225.21	OJI-CV 411.33
225.22	OJI-CV 411.35
225.25	OJI-CV 411.37
225.251	OJI-CV 411.39
225.26	OJI-CV 411.41
225.27	OJI-CV 411.43
225.28	OJI-CV 411.45
225.29	OJI-CV 411.47
225.30	OJI-CV 411.49
225.31	OJI-CV 411.51
225.32	OJI-CV 411.53
225.33	OJI-CV 411.55
225.34	OJI-CV 411.57
225.35	OJI-CV 411.59
225.36	OJI-CV 411.61
225.37	OJI-CV 411.63
225.38	OJI-CV 411.65
225.39	OJI-CV 411.67
225.40	OJI-CV 411.69
225.41	OJI-CV 411.71
225.42	OJI-CV 411.73
225.43	OJI-CV 411.75
225.431	OJI-CV 411.77
225.44	OJI-CV 411.79
225.441	OJI-CV 411.81
225.45	OJI-CV 411.83
225.451	OJI-CV 411.85
225.452	OJI-CV 411.87
225.46	OJI-CV 411.89
225.47	OJI-CV 411.91
225.48	OJI-CV 411.93
225.481	OJI-CV 411.95
225.49	OJI-CV 411.97
225.50	OJI-CV 411.99
225.51	OJI-CV 411.101
225.52	OJI-CV 411.103
225.66	OJI-CV 411.105



Previous Instruction Number	New Edition Instruction Number
227.02	OJI-CV 411.107
227.021	OJI-CV 411.109
227.03	OJI-CV 411.111
229.01	OJI-CV 629.01
229.02	OJI-CV 629.03
239.01	OJI-CV 605.01
239.03	OJI-CV 605.03
239.05	OJI-CV 605.05
239.07	OJI-CV 605.07
239.09	OJI-CV 605.09
245.01	OJI-CV 407.01
245.03	OJI-CV 407.03
245.05	OJI-CV 407.05
245.07	OJI-CV 407.07
245.09	OJI-CV 407.09
245.11	OJI-CV 407.11
245.13	OJI-CV 407.13
245.15	OJI-CV 407.15
245.17	OJI-CV 407.17
245.19	OJI-CV 407.19
245.21	OJI-CV 407.21
245.23	OJI-CV 407.23
247.01	OJI-CV 713.01
252.01	OJI-CV 447.01
253.01	OJI-CV 501.01
253.03	OJI-CV 501.03
253.05	OJI-CV 501.05
253.07	OJI-CV 501.07
253.09	OJI-CV 501.09
253.11	OJI-CV 501.11
253.13	OJI-CV 501.13
253.15	OJI-CV 501.15
253.17	OJI-CV 501.17
253.19	OJI-CV 501.19
253.21	OJI-CV 501.21
253.23	OJI-CV 501.23
253.24	OJI-CV 501.25
253.25	OJI-CV 501.27
253.26	OJI-CV 501.29
253.27	OJI-CV 501.31
253.29	OJI-CV 501.33
253.31	OJI-CV 501.35
253.33	OJI-CV 501.37
253.35	OJI-CV 501.39

Previous Instruction Number	New Edition Instruction Number
255.01	OJI-CV 521.01
255.03	OJI-CV 521.03
257.01	OJI-CV 625.01
257.03	OJI-CV 625.03
257.05	OJI-CV 625.05
257.07	OJI-CV 625.07
264.01	OJI-CV 431.01
264.03	OJI-CV 431.03
264.05	OJI-CV 431.05
264.07	OJI-CV 431.07
265.01	OJI-CV 419.01
265.02	OJI-CV 419.03
266.01	OJI-CV 533.01
266.03	OJI-CV 533.03
266.05	OJI-CV 533.05
266.07	OJI-CV 533.07
266.09	OJI-CV 533.09
266.11	OJI-CV 533.11
266.15	OJI-CV 533.13
266.17	OJI-CV 533.15
266.19	OJI-CV 533.17
266.21	OJI-CV 533.19
266.23	OJI-CV 533.21
266.25	OJI-CV 533.23
266.27	OJI-CV 533.25
271.01	OJI-CV 453.01
271.03	OJI-CV 453.03
301.01	OJI-CV 609.01
301.03	OJI-CV 609.03
301.05	OJI-CV 609.05
301.07	OJI-CV 609.07
301.09	OJI-CV 609.09
301.11	OJI-CV 609.11
301.13	OJI-CV 609.13
301.15	OJI-CV 609.15
301.17	OJI-CV 609.17
301.19	OJI-CV 609.19
301.21	OJI-CV 609.21
301.23	OJI-CV 609.23
302.01	OJI-CV 537.01
302.03	OJI-CV 453.05
302.05 (claims arising before 4/09/03)	OJI-CV 537.05 (claims arising before 4/09/03)



Previous Instruction Number	New Edition Instruction Number
302.05 (claims arising on and after 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/7/05)
302.05 (claims arising on and after 4/9/03 but before 4/7/05)	OJI-CV 537.05 (claims arising on and after 4/9/03 but before 4/7/05)
302.07	OJI-CV 537.07
302.09	OJI-CV 537.09
302.11	OJI-CV 537.11
302.13	OJI-CV 537.13
302.15	OJI-CV 537.15
302.17	OJI-CV 537.17
305.01	OJI-CV 437.01
307.01	OJI-CV 449.01
307.03	OJI-CV 449.03
307.05	OJI-CV 449.05
307.07	OJI-CV 449.07
307.09	OJI-CV 449.09
307.11	OJI-CV 449.11
307.13	OJI-CV 449.13
307.15	OJI-CV 449.15
307.17	OJI-CV 449.17
309.01	OJI-CV 441.01
309.03	OJI-CV 441.03
309.05	OJI-CV 441.05
309.07	OJI-CV 441.07
312.01	OJI-CV 425.01
312.03	OJI-CV 425.03
312.05	OJI-CV 425.05
312.07	OJI-CV 425.07
312.09	OJI-CV 425.09
312.11	OJI-CV 425.11
312.13	OJI-CV 425.13
312.15	OJI-CV 425.15
313.01	OJI-CV 637.01
313.03	OJI-CV 637.03
313.05	OJI-CV 637.05
313.07	OJI-CV 637.07
313.09	OJI-CV 637.09
313.11	OJI-CV 637.11
315.01	OJI-CV 509.01
315.02	OJI-CV 509.03
315.03	OJI-CV 509.05
315.04	OJI-CV 509.07
317.01	OJI-CV 701.01
317.03	OJI-CV 701.03

Previous Instruction Number	New Edition Instruction Number
317.05	OJI-CV 701.05
317.07	OJI-CV 701.07
317.09	OJI-CV 701.09
317.11	OJI-CV 701.11
317.13	OJI-CV 701.13
317.15	OJI-CV 701.15
319.01	OJI-CV 415.01
319.03	OJI-CV 415.03
319.05	OJI-CV 415.05
319.07	OJI-CV 415.07
319.09	OJI-CV 415.09
319.11	OJI-CV 415.11
323.01	OJI-CV 709.01
323.03	OJI-CV 709.03
323.05	OJI-CV 709.05
323.07	OJI-CV 709.07
323.09	OJI-CV 709.09
323.11	OJI-CV 709.11
323.13	OJI-CV 709.13
323.15	OJI-CV 709.15
323.17	OJI-CV 709.17
323.19	OJI-CV 709.19
323.21	OJI-CV 709.21
323.23	OJI-CV 709.23
323.25	OJI-CV 709.25
323.27	OJI-CV 709.27
323.29	OJI-CV 709.29
323.31	OJI-CV 709.31
323.33	OJI-CV 709.33
323.35	OJI-CV 709.35
323.37	OJI-CV 709.37
323.39	OJI-CV 709.39
323.41	OJI-CV 709.41
323.43	OJI-CV 709.43
323.45	OJI-CV 709.45
323.47	OJI-CV 709.47
323.49	OJI-CV 709.49
323.51	OJI-CV 709.51
323.53	OJI-CV 709.53
323.55	OJI-CV 709.55
323.57	OJI-CV 709.57
323.59	OJI-CV 709.59
323.61	OJI-CV 709.61
323.63	OJI-CV 709.63



Previous Instruction Number	New Edition Instruction Number
323.65	OJI-CV 709.65
325.01	OJI-CV 413.01
325.03	OJI-CV 413.03
325.05	OJI-CV 413.05
325.07	OJI-CV 413.07
325.09	OJI-CV 413.09
325.11	OJI-CV 413.11
327.01	OJI-CV 613.01
327.03	OJI-CV 613.03
327.05	OJI-CV 613.05
327.07	OJI-CV 613.07
327.11	OJI-CV 613.09
327.13	OJI-CV 613.11
327.15	OJI-CV 613.13
327.17	OJI-CV 613.15
327.19	OJI-CV 613.17
327.21	OJI-CV 613.19
327.23	OJI-CV 613.21
327.25	OJI-CV 613.23
327.27	OJI-CV 613.25
327.29	OJI-CV 613.27
327.31	OJI-CV 613.29
327.33	OJI-CV 613.31
327.35	OJI-CV 613.33
329.01	OJI-CV 529.01
330.01	OJI-CV 439.01
330.03	OJI-CV 439.03
330.05	OJI-CV 439.05
330.07	OJI-CV 439.07
330.09	OJI-CV 439.09
331.01	OJI-CV 417.01
331.03	OJI-CV 417.03
331.05	OJI-CV 417.05
331.07	OJI-CV 417.07
331.09	OJI-CV 417.09
331.11	OJI-CV 417.11
331.13	OJI-CV 417.13
331.15	OJI-CV 417.15
331.17	OJI-CV 417.17
331.19	OJI-CV 417.19
333.01	OJI-CV 421.01
333.03	OJI-CV 421.03
333.05	OJI-CV 421.05
333.07	REMOVED

<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
345.01	OJI-CV 621.01
345.03	OJI-CV 621.03
345.05	OJI-CV 621.05
345.07	OJI-CV 621.07
345.09	OJI-CV 621.09
345.11	OJI-CV 621.11
345.13	OJI-CV 621.13
348.01	OJI-CV 705.01
348.03(A)	OJI-CV 705.03
348.03(B)	OJI-CV 705.05
348.07	OJI-CV 705.07
348.09	OJI-CV 705.09
348.11	OJI-CV 705.11
348.13	OJI-CV 705.13
348.15	OJI-CV 705.15
349.01	OJI-CV 433.01
349.03	OJI-CV 433.03
349.05	OJI-CV 433.05
349.07	OJI-CV 433.07
349.09	OJI-CV 433.09
349.11	OJI-CV 433.11
349.13	OJI-CV 433.13
351.01	OJI-CV 451.01
351.03	OJI-CV 451.03
351.05	OJI-CV 451.05
351.07	OJI-CV 451.07
351.09	OJI-CV 451.09
351.11	OJI-CV 451.11
351.13	OJI-CV 451.13
351.15	OJI-CV 451.15
351.17	OJI-CV 451.17
351.19	OJI-CV 451.19
351.21	OJI-CV 451.21
351.23	OJI-CV 451.23
354.01	OJI-CV 601.01
354.03	OJI-CV 601.03
354.05	OJI-CV 601.05
354.07	OJI-CV 601.07
354.09	OJI-CV 601.09
355.01	OJI-CV 443.01
356.01	OJI-CV 445.01
356.03	OJI-CV 445.03
356.05	OJI-CV 445.05
356.07	OJI-CV 445.07



Previous Instruction Number	New Edition Instruction Number
356.09	OJI-CV 445.09
356.11	OJI-CV 445.11
356.13	OJI-CV 445.13
356.15	OJI-CV 445.15
356.17	OJI-CV 445.17
356.19	OJI-CV 445.19
356.21	OJI-CV 445.21
356.23	OJI-CV 445.23
356.25	OJI-CV 445.25
359.01	OJI-CV 513.01
359.03	OJI-CV 513.03
359.05	OJI-CV 513.05
359.07	OJI-CV 513.07
359.09	OJI-CV 513.09
362.01	OJI-CV 505.01
362.03	OJI-CV 505.03
362.05	OJI-CV 505.05
362.07	OJI-CV 505.07
362.09	OJI-CV 505.09
362.11	OJI-CV 505.11
362.13	OJI-CV 505.13
362.15	OJI-CV 505.15
362.17	OJI-CV 505.17
362.19	OJI-CV 505.19
362.21	OJI-CV 505.21
362.23	OJI-CV 505.23
362.25	OJI-CV 505.25
362.27	OJI-CV 505.27
362.29	OJI-CV 505.29
362.31	OJI-CV 505.31
362.33	OJI-CV 505.33
362.35	OJI-CV 505.35
362.37	OJI-CV 505.37
362.39	OJI-CV 505.39
362.41	OJI-CV 505.41
362.43	OJI-CV 505.43
362.45	OJI-CV 505.45
362.47	OJI-CV 505.47
362.49	OJI-CV 505.49
362.51	OJI-CV 505.51
362.53	OJI-CV 505.53
363.01	OJI-CV 633.01
363.03	OJI-CV 633.03
363.05	OJI-CV 633.05

Previous Instruction Number	New Edition Instruction Number
363.07	OJI-CV 633.07
363.09	OJI-CV 633.09
363.13	OJI-CV 633.11
365.01	OJI-CV 427.01
365.03	OJI-CV 427.03
365.05	OJI-CV 427.05
365.07	OJI-CV 427.07
365.09	OJI-CV 427.09
365.11	OJI-CV 427.11
365.13	OJI-CV 427.13
365.15	OJI-CV 427.15
365.17	OJI-CV 427.17
365.19	OJI-CV 427.19
369.01	OJI-CV 517.01
369.03	OJI-CV 517.03
369.05	OJI-CV 517.05
369.07	OJI-CV 517.07
369.09	OJI-CV 517.09
369.11	OJI-CV 517.11
369.13	OJI-CV 517.13
369.15	OJI-CV 517.15
369.17	OJI-CV 517.17



## CRIMINAL INSTRUCTIONS CORRELATION TABLE

Previous Instruction Number	New Edition Instruction Number
1.01	OJI-CR 101.01
1.03	OJI-CR 101.03
1.05	OJI-CR 101.05
1.07	OJI-CR 101.07
1.09	OJI-CR 101.09
1.11	OJI-CR 101.11
1.13	OJI-CR 101.13
1.15	OJI-CR 101.15
1.17	OJI-CR 101.17
1.19	OJI-CR 101.19
1.21	OJI-CR 101.21
1.23	OJI-CR 101.23
1.25	OJI-CR 101.25
1.27	OJI-CR 101.27
1.29	OJI-CR 101.29
1.31	OJI-CR 101.31
1.33	OJI-CR 101.33
1.35	OJI-CR 101.35
1.37	OJI-CR 101.37
1.39	OJI-CR 101.39
1.41	OJI-CR 101.41
1.43	OJI-CR 101.43
1.45	OJI-CR 101.45
1.47	OJI-CR 101.47
1.49	OJI-CR 101.49
1.51	OJI-CR 101.51
1.53	OJI-CR 101.53
1.55	OJI-CR 101.55
1.57	OJI-CR 101.57
1.59	OJI-CR 101.59
1.61	OJI-CR 101.61
1.63	OJI-CR 101.63
1.65	OJI-CR 101.65
1.67	OJI-CR 101.67
1.69	OJI-CR 101.69
1.71	OJI-CR 101.71
1.73	OJI-CR 101.73
1.75	OJI-CR 101.75
1.77	OJI-CR 101.77
1.79	OJI-CR 101.79
1.81	OJI-CR 101.81
1.83	OJI-CR 101.83

Previous Instruction Number	New Edition Instruction Number
1.85	OJI-CR 101.85
1.87	OJI-CR 101.87
401.01	OJI-CR 301.01
401.02	OJI-CR 301.03
401.03	OJI-CR 301.05
401.04	OJI-CR 301.07
402.10	OJI-CR 401.01
402.11	OJI-CR 401.03
402.12	OJI-CR 401.05
402.20	OJI-CR 401.07
402.21	OJI-CR 401.09
402.25	OJI-CR 401.11
402.30	OJI-CR 401.13
402.50	OJI-CR 401.15
402.51	OJI-CR 401.17
402.52	OJI-CR 401.19
402.53	OJI-CR 401.21
402.60	OJI-CR 401.23
402.61	OJI-CR 401.25
402.99	OJI-CR 401.27
403.01	OJI-CR 405.01
403.03	OJI-CR 405.03
403.10	OJI-CR 405.05
403.50	OJI-CR 405.07
403.55	OJI-CR 405.09
405.01	OJI-CR 409.01
405.10	OJI-CR 409.03
405.20	OJI-CR 409.05
405.21	OJI-CR 409.07
405.22	OJI-CR 409.11
405.25	OJI-CR 409.13
405.40	OJI-CR 409.15
405.41	OJI-CR 409.17
405.50	OJI-CR 409.19
405.51	OJI-CR 409.21
405.52	OJI-CR 409.23
405.60	OJI-CR 409.25
405.63	OJI-CR 409.27
405.64	OJI-CR 409.29
405.65	OJI-CR 409.31
405.91	OJI-CR 409.33
407.01	OJI-CR 413.01
407.03	OJI-CR 413.03
407.05	OJI-CR 413.05



Previous Instruction Number	New Edition Instruction Number
407.10	OJI-CR 413.07
409.01	OJI-CR 417.01
409.02	OJI-CR 417.03
409.03	OJI-CR 417.05
409.05	OJI-CR 417.07
409.07	OJI-CR 417.09
409.11	OJI-CR 417.11
409.13	OJI-CR 417.13
409.15	OJI-CR 417.15
409.21	OJI-CR 417.17
409.31	OJI-CR 417.19
409.50	OJI-CR 417.21
409.55	OJI-CR 417.23
409.56	OJI-CR 417.25
409.57	OJI-CR 417.27
409.60	OJI-CR 417.29
409.65	OJI-CR 417.31
409.67	OJI-CR 417.33
411.01	OJI-CR 421.01
411.03	OJI-CR 421.03
411.05	OJI-CR 421.05
411.07	OJI-CR 421.07
411.10 (offenses committed before 10/27/00)	OJI-CR 421.09 (offenses committed before 10/27/00)
411.10 (offenses committed on and after 10/27/00)	OJI-CR 421.09 (offenses committed on and after 10/27/00)
411.11 (offenses committed before 10/27/00)	OJI-CR 421.11 (offenses committed before 10/27/00)
411.11 (offenses committed on and after 10/27/00)	OJI-CR 421.11 (offenses committed on and after 10/27/00)
411.19	OJI-CR 421.13
411.20	OJI-CR 421.15
411.25	OJI-CR 421.17
411.31	OJI-CR 421.19
411.33	OJI-CR 421.21
411.35	OJI-CR 421.23
411.51	OJI-CR 421.25
411.53	OJI-CR 421.27
411.55	OJI-CR 421.29
413.01	OJI-CR 425.01
413.05	OJI-CR 425.03
413.10	OJI-CR 425.05
413.11	OJI-CR 425.07
413.21	OJI-CR 425.09



Previous Instruction Number	New Edition Instruction Number
413.23	OJI-CR 425.11
413.30	OJI-CR 425.13
413.35	OJI-CR 425.15
413.37	OJI-CR 425.17
413.38	OJI-CR 425.19
413.39	OJI-CR 425.21
413.40	OJI-CR 425.23
413.43	OJI-CR 425.25
413.45	OJI-CR 425.27
413.47	OJI-CR 425.29
413.49	OJI-CR 425.31
413.50	OJI-CR 425.33
413.60	OJI-CR 425.35
413.70	OJI-CR 425.37
413.80	OJI-CR 425.39
413.81	OJI-CR 425.41
413.90	OJI-CR 425.43
415.01	OJI-CR 429.01
415.03	OJI-CR 429.03
415.05	OJI-CR 429.05
415.10	OJI-CR 429.07
415.50	OJI-CR 429.09
415.75	OJI-CR 429.11
415.90	OJI-CR 429.13
503.01	OJI-CR 503.01
503.011	OJI-CR 503.011
503.02 (offenses committed on and after 9/6/96 but before 6/30/98)	OJI-CR 503.02 (offenses committed on and after 9/6/96 but before 6/30/98)
503.02 (offenses committed on and after 6/30/98)	OJI-CR 503.02 (offenses committed on and after 6/30/98)
503.03 (offenses committed on and after 9/6/96)	OJI-CR 503.03 (offenses committed on and after 9/6/96)
503.04 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.04 (offenses committed on and after 9/6/96 but before 3/23/00)
503.04 (offenses committed on and after 3/23/00)	OJI-CR 503.04 (offenses committed on and after 3/23/00)
503.041	OJI-CR 503.041
503.05	OJI-CR 503.05
503.06 (offenses committed before 3/23/00)	OJI-CR 503.06 (offenses committed before 3/23/00)
503.06 (offenses committed on and after 3/23/00)	OJI-CR 503.06 (offenses committed on and after 3/23/00)
503.07 (offenses committed on and after 9/6/96) [section repealed 3/23/00]	OJI-CR 503.07 (offenses committed on and after 9/6/96)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
503.08 (offenses committed on and after 9/6/96 but before 3/23/00)	OJI-CR 503.08 (offenses committed on and after 9/6/96 but before 3/23/00)
503.08 (offenses committed on and after 3/23/00)	OJI-CR 503.08 (offenses committed on and after 3/23/00)
503.11(A) (offenses committed on and after 9/6/96) [Rev. 2-24-07]	OJI-CR 503.11(A) (offenses committed on and after 9/6/96)
503.11(B) (offenses committed on and after 3/23/00) [Rev. 1-20-07]	OJI-CR 503.11(B) (offenses committed on and after 3/23/00)
503.12	OJI-CR 503.12
503.13	OJI-CR 503.13
503.14 (offenses committed on and after 9/6/96)	OJI-CR 503.14 (offenses committed on and after 9/6/96)
503.15 (offenses committed on and after 8/25/99)	OJI-CR 503.15 (offenses committed on and after 8/25/99)
503.16	OJI-CR 503.16
503.21 (offenses committed on and after 9/6/96)	OJI-CR 503.21 (offenses committed on and after 9/6/96)
503.22 (offenses committed on and after 9/6/96)	OJI-CR 503.22 (offenses committed on and after 9/6/96)
503.31	OJI-CR 503.31
503.34	OJI-CR 503.34
503.35	OJI-CR 503.35
503.211 (offenses committed before 3/10/00)	OJI-CR 503.211 (offenses committed before 3/10/00)
503.211 (offenses committed on and after 3/10/00)	OJI-CR 503.211 (offenses committed on and after 3/10/00 but before 1/1/08) OJI-CR 503.211 (offenses committed on and after 1/1/08)
503.214	OJI-CR 503.214
505.01(A) (offenses committed before 7/1/96)	OJI-CR 505.01(A) (offenses committed before 7/1/96)
505.01(A) (offenses committed on and after 7/1/96) [Rev. 1-20-07]	OJI-CR 505.01(A) (offenses committed on and after 7/1/96)
505.01(B) (offenses committed before 7/1/96)	OJI-CR 505.01(B) (offenses committed before 7/1/96)
505.01(B) (offenses committed on and after 7/1/96)	OJI-CR 505.01(B) (offenses committed on and after 7/1/96)
505.02 (offenses committed before 7/1/96)	OJI-CR 505.02 (offenses committed before 7/1/96)
505.02 (offenses committed on and after 7/1/96)	OJI-CR 505.02 (offenses committed on and after 7/1/96)
505.03	OJI-CR 505.03
505.04 (offenses committed before 7/1/96)	OJI-CR 505.04 (offenses committed before 7/1/96)
505.05 (offenses committed before 7/1/96)	OJI-CR 505.05
505.05	OJI-CR 505.05



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
505.11 (offenses committed before 7/1/96)	OJI-CR 505.11 (offenses committed before 7/1/96)
505.11 (offenses committed on and after 7/1/96)	OJI-CR 505.11 (offenses committed on and after 7/1/96)
505.12	OJI-CR 505.12
505.22 (offenses committed before 7/1/96)	OJI-CR 505.22 (offenses committed before 7/1/96)
505.22 (offenses committed on and after 7/1/96)	OJI-CR 505.22 (offenses committed on and after 7/1/96)
507.02(A)(1) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(1) (offenses committed before 7/1/96)
507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 7/1/96 but before 3/10/98)
507.02(A)(1) (offenses committed on and after 3/10/98)	OJI-CR 507.02(A)(1) (offenses committed on and after 3/10/98)
507.02(A)(2) (offenses committed before 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed before 7/1/96)
507.02(A)(2) (offenses committed on and after 7/1/96)	OJI-CR 507.02(A)(2) (offenses committed on and after 7/1/96)
507.03 (offenses committed before 7/1/96)	OJI-CR 507.03 (offenses committed before 7/1/96)
507.03 (offenses committed on and after 7/1/96)	OJI-CR 507.03 (offenses committed on and after 7/1/96)
507.04 (offenses committed before 7/1/96)	OJI-CR 507.04 (offenses committed before 7/1/96)
507.04 (offenses committed on and after 7/1/96)	OJI-CR 507.04 (offenses committed on and after 7/1/96)
507.05 (offenses committed before 7/1/96)	OJI-CR 507.05 (offenses committed before 7/1/96)
507.05 (offenses committed on and after 7/1/96 but before 3/10/98)	OJI-CR 507.05 (offenses committed on and after 7/1/96 but before 3/10/98)
507.05 (offenses committed on and after 3/10/98)	OJI-CR 507.05 (offenses committed on and after 3/10/98)
507.06 (offenses committed before 7/1/96)	OJI-CR 507.06 (offenses committed before 7/1/96)
507.06 (offenses committed on and after 7/1/96)	OJI-CR 507.06 (offenses committed on and after 7/1/96)
507.07 (offenses committed before 3/22/01)	OJI-CR 507.07 (offenses committed before 3/22/01)
507.07 (offenses committed on and after 3/22/01 but before 5/7/02)	OJI-CR 507.07 (offenses committed on and after 3/22/01 but before 5/7/02)
507.07 (offenses committed on and after 5/7/02 but before 7/31/03)	OJI-CR 507.07 (offenses committed on and after 5/7/02 but before 7/31/03)
507.07 (offenses committed on and after 7/31/03)	OJI-CR 507.07 (offenses committed on and after 7/31/03)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
507.08 (offenses committed before 1/30/98)	OJI-CR 507.08 (offenses committed before 1/30/98)
507.08 (offenses committed on and after 1/30/98)	OJI-CR 507.08 (offenses committed on and after 1/30/98)
507.09 (offenses committed before 9/26/05)	OJI-CR 507.09 (offenses committed before 9/26/05)
507.09 (offenses committed on and after 9/26/05)	OJI-CR 507.09 (offenses committed on and after 9/26/05)
507.12(A)(1) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(1) (offenses committed before 9/3/96)
507.12(A)(2) (offenses committed before 9/3/96)	OJI-CR 507.12(A)(2) (offenses committed before 9/3/96)
507.21 (offenses committed before 7/1/96)	OJI-CR 507.21 (offenses committed before 7/1/96)
507.21 (offenses committed on and after 7/1/96)	OJI-CR 507.21 (offenses committed on and after 7/1/96)
507.22 (offenses committed before 7/1/96)	OJI-CR 507.22 (offenses committed before 7/1/96)
507.22 (offenses committed on and after 7/1/96)	OJI-CR 507.22 (offenses committed on and after 7/1/96)
507.23	OJI-CR 507.23
507.24	OJI-CR 507.24
507.25 (offenses committed before 7/1/96)	OJI-CR 507.25 (offenses committed before 7/1/96)
507.31 (offenses committed before 7/1/96)	OJI-CR 507.31 (offenses committed before 7/1/96)
507.31 (offenses committed on and after 7/1/96 but before 1/1/04)	OJI-CR 507.31 (offenses committed on and after 7/1/96 but before 1/1/04)
507.31 (offenses committed on and after 1/1/04)	OJI-CR 507.31 (offenses committed on and after 1/1/04)
507.32	OJI-CR 507.32
507.33	OJI-CR 507.33
507.34(A) (offenses committed before 7/1/96)	OJI-CR 507.34(A) (offenses committed before 7/1/96)
507.34(A) (offenses committed on and after 7/1/96)	OJI-CR 507.34(A) (offenses committed on and after 7/1/96)
507.34(B) (offenses committed before 7/1/96)	OJI-CR 507.34(B) (offenses committed before 7/1/96)
507.34(B) (offenses committed on and after 7/1/96)	OJI-CR 507.34(B) (offenses committed on and after 7/1/96)
507.42 (offenses committed before 7/1/96)	OJI-CR 507.42 (offenses committed before 7/1/96)
507.42 (offenses committed on and after 7/1/96)	OJI-CR 507.42 (offenses committed on and after 7/1/96)
507.53(A)	OJI-CR 507.53(A)
507.53(B)	OJI-CR 507.53(B)
507.53(C)	OJI-CR 507.53(C)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
507.71 (offenses committed on and after 1/1/97)	OJI-CR 507.71 (offenses committed on and after 1/1/97)
507.72 (offenses committed on and after 1/1/97)	OJI-CR 507.72 (offenses committed on and after 1/1/97)
507.241 (offenses committed before 7/1/96)	OJI-CR 507.241 (offenses committed before 7/1/96)
507.241 (offenses committed on and after 7/1/96)	OJI-CR 507.241 (offenses committed on and after 7/1/96)
507.311	OJI-CR 507.311
507.321 (offenses committed before 7/1/96)	OJI-CR 507.321 (offenses committed before 7/1/96)
507.321 (offenses committed on and after 7/1/96)	OJI-CR 507.321 (offenses committed on and after 7/1/96)
507.322 (offenses committed before 7/1/96)	OJI-CR 507.322 (offenses committed before 7/1/96)
507.322 (offenses committed on and after 7/1/96)	OJI-CR 507.322 (offenses committed on and after 7/1/96)
507.323 (offenses committed before 7/1/96)	OJI-CR 507.323 (offenses committed before 7/1/96)
507.323 (offenses committed on and after 7/1/96)	OJI-CR 507.323 (offenses committed on and after 7/1/96)
509.02 (offenses committed before 7/1/96)	OJI-CR 509.02 (offenses committed before 7/1/96)
509.02 (offenses committed on and after 7/1/96)	OJI-CR 509.02 (offenses committed on and after 7/1/96)
509.03 (offenses committed before 7/1/96)	OJI-CR 509.03 (offenses committed before 7/1/96)
509.03 (offenses committed on and after 7/1/96)	OJI-CR 509.03 (offenses committed on and after 7/1/96)
509.04 (offenses committed before 7/1/96)	OJI-CR 509.04 (offenses committed before 7/1/96)
509.04 (offenses committed on and after 7/1/96)	OJI-CR 509.04 (offenses committed on and after 7/1/96)
509.05(A) (offenses committed before 7/1/96)	OJI-CR 509.05(A) (offenses committed before 7/1/96)
509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(A) (offenses committed on and after 9/30/98)	OJI-CR 509.05(A) (offenses committed on and after 9/30/98)
509.05(B) (offenses committed before 7/1/96)	OJI-CR 509.05(B) (offenses committed before 7/1/96)
509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(B) (offenses committed on and after 9/30/98)	OJI-CR 509.05(B) (offenses committed on and after 9/30/98)
509.05(C) (offenses committed before 7/1/96)	OJI-CR 509.05(C) (offenses committed before 7/1/96)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 7/1/96 but before 9/30/98)
509.05(C) (offenses committed on and after 9/30/98)	OJI-CR 509.05(C) (offenses committed on and after 9/30/98)
509.05(D) (offenses committed before 7/1/96)	OJI-CR 509.05(D) (offenses committed before 7/1/96)
509.05(D) (offenses committed on and after 7/1/96)	OJI-CR 509.05(D) (offenses committed on and after 7/1/96)
509.06 (offenses committed before 7/1/96)	OJI-CR 509.06 (offenses committed before 7/1/96)
509.06 (offenses committed on and after 7/1/96)	OJI-CR 509.06 (offenses committed on and after 7/1/96)
509.07 (offenses committed before 7/1/96)	OJI-CR 509.07 (offenses committed before 7/1/96)
509.07 (offenses committed on and after 7/1/96)	OJI-CR 509.07 (offenses committed on and after 7/1/96)
509.08 (offenses committed before 7/1/96)	OJI-CR 509.08 (offenses committed before 7/1/96)
509.08 (offenses committed on or after 7/1/96)	OJI-CR 509.08 (offenses committed on or after 7/1/96)
509.22	OJI-CR 509.22
509.23	OJI-CR 509.23
509.24	OJI-CR 509.24
511.01(A)	OJI-CR 511.01(A)
511.01(B)	OJI-CR 511.01(B)
511.02	OJI-CR 511.02
511.11	OJI-CR 511.11
511.12	OJI-CR 511.12
511.13(A)	OJI-CR 511.13(A)
511.13(B)	OJI-CR 511.13(B)
511.21	OJI-CR 511.21
511.31	OJI-CR 511.31
511.32	OJI-CR 511.32
511.211	OJI-CR 511.211
513.02 (offenses committed before 7/1/96)	OJI-CR 513.02 (offenses committed before 7/1/96)
513.02 (offenses committed on and after 7/1/96)	OJI-CR 513.02 (offenses committed on and after 7/1/96)
513.03 (offenses committed before 7/1/96)	OJI-CR 513.03 (offenses committed before 7/1/96)
513.03 (offenses committed on and after 7/1/96)	OJI-CR 513.03 (offenses committed on and after 7/1/96)
513.04 (offenses committed before 7/1/96)	OJI-CR 513.04 (offenses committed before 7/1/96)
513.04 (offenses committed on and after 7/1/96)	OJI-CR 513.04 (offenses committed on and after 7/1/96)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
513.041 (offenses committed on and after 7/1/96)	OJI-CR 513.041 (offenses committed on and after 7/1/96)
513.11 (offenses committed before 7/1/96)	OJI-CR 513.11 (offenses committed before 7/1/96)
513.11 (offenses committed on and after 7/1/96)	OJI-CR 513.11 (offenses committed on and after 7/1/96)
513.21 (offenses committed before 7/1/96)	OJI-CR 513.21 (offenses committed before 7/1/96)
513.21 (offenses committed on and after 7/1/96)	OJI-CR 513.21 (offenses committed on and after 7/1/96)
513.31(A) (offenses committed before 7/1/96)	OJI-CR 513.31(A) (offenses committed before 7/1/96)
513.31(A) (offenses committed on and after 7/1/96)	OJI-CR 513.31(A)(offenses committed on and after 7/1/96)
513.31(B)	OJI-CR 513.31(B)
513.32 (offenses committed before 7/1/96)	OJI-CR 513.32 (offenses committed before 7/1/96)
513.32 (offenses committed on and after 7/1/96)	OJI-CR 513.32 (offenses committed on and after 7/1/96)
513.33 (offenses committed on and after 3/31/97)	OJI-CR 513.33 (offenses committed on and after 3/31/97)
513.34 (offenses committed on and after 3/31/97)	OJI-CR 513.34 (offenses committed on and after 3/31/97)
513.40	OJI-CR 513.40
513.41 (offenses committed before 7/1/96)	OJI-CR 513.41 (offenses committed before 7/1/96)
513.42 (offenses committed before 7/1/96)	OJI-CR 513.42 (offenses committed before 7/1/96)
513.42 (offenses committed on and after 7/1/96)	OJI-CR 513.42 (offenses committed on and after 7/1/96)
513.43 (offenses committed before 7/1/96)	OJI-CR 513.43 (offenses committed before 7/1/96)
513.43 (offenses committed on and after 7/1/96)	OJI-CR 513.43 (offenses committed on and after 7/1/96)
513.44	OJI-CR 513.44
513.45 (offenses committed before 7/1/96)	OJI-CR 513.45 (offenses committed before 7/1/96)
513.45 (offenses committed on and after 7/1/96)	OJI-CR 513.45 (offenses committed on and after 7/1/96)
513.46(A) (offenses committed before 10/29/95)	OJI-CR 513.46(A)(offenses committed before 10/29/95)
513.46(B) (offenses committed before 10/29/95)	OJI-CR 513.46(B) (offenses committed before 10/29/95)
513.46(B) (offenses committed on and after 9/26/96)	OJI-CR 513.46(B) (offenses committed on and after 9/26/96)
513.46(C) (offenses committed on and after 9/26/96)	OJI-CR 513.46(C) (offenses committed on and after 9/26/96)



Previous Instruction Number	New Edition Instruction Number
513.47 (offenses committed before 7/1/96)	OJI-CR 513.47 (offenses committed before 7/1/96)
513.47 (offenses committed on and after 7/1/96)	OJI-CR 513.47 (offenses committed on and after 7/1/96)
513.48 (offenses committed before 7/1/96)	OJI-CR 513.48 (offenses committed before 7/1/96)
513.48 (offenses committed on and after 7/1/96)	OJI-CR 513.48 (offenses committed on and after 7/1/96)
513.51 (offenses committed before 7/1/96)	OJI-CR 513.51 (offenses committed before 7/1/96)
513.51 (offenses committed on or after 7/1/96)	OJI-CR 513.51 (offenses committed on or after 7/1/96)
513.81 (offenses committed before 7/1/96)	OJI-CR 513.81 (offenses committed before 7/1/96)
513.401	OJI-CR 513.401
515.02	OJI-CR 515.02
515.03	OJI-CR 515.03
515.04	OJI-CR 515.04
515.05	OJI-CR 515.05
515.05(A) (offenses committed before 7/1/96)	OJI-CR 515.05(A) (offenses committed before 7/1/96)
515.05(B) (offenses committed on and after 7/1/96)	OJI-CR 515.05(B) (offenses committed on and after 7/1/96)
515.06 (offenses committed before 7/1/96)	OJI-CR 515.06 (offenses committed before 7/1/96)
515.07	OJI-CR 515.07
515.09	OJI-CR 515.09
515.10(A)	OJI-CR 515.10(A)
515.10(C)	OJI-CR 515.10(C)
515.11	OJI-CR 515.11
515.12 (offenses committed before 7/1/96)	OJI-CR 515.12 (offenses committed before 7/1/96)
517.01	OJI-CR 517.01
517.02(A)	OJI-CR 517.02(A)
517.02(B)	OJI-CR 517.02(B)
517.03	OJI-CR 517.03
517.11(A)	OJI-CR 517.11(A)
517.11(B)	OJI-CR 517.11(B)
517.12	OJI-CR 517.12
517.13	OJI-CR 517.13
517.21(A)	OJI-CR 517.21(A)
517.21(B)	OJI-CR 517.21(B)
517.31	OJI-CR 517.31
517.32	OJI-CR 517.32
517.40	OJI-CR 517.40



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
517.41	OJI-CR 517.41
517.47	OJI-CR 517.47
519.01	OJI-CR 519.01
519.12(A)	OJI-CR 519.12(A)
519.12(B)	OJI-CR 519.12(B)
519.13(A)	OJI-CR 519.13(A)
519.13(B)	OJI-CR 519.13(B)
519.14	OJI-CR 519.14
519.21(A)	OJI-CR 519.21(A)
519.21(B)	OJI-CR 519.21(B)
519.22	OJI-CR 519.22
519.23(A)	OJI-CR 519.23(A)
519.23(B)	OJI-CR 519.23(B)
519.24	OJI-CR 519.24
519.24(A)(3) (offenses committed on and after 1/1/02)	OJI-CR 519.24(A)(3) (offenses committed on and after 1/1/02)
519.25	OJI-CR 519.25
519.27	OJI-CR 519.27
519.231	OJI-CR 519.231
521.02	OJI-CR 521.02
521.03 (offenses committed before 9/3/96)	OJI-CR 521.03 (offenses committed before 9/3/96)
521.03 (offenses committed on and after 9/3/96 and before 11/6/96)	OJI-CR 521.03 (offenses committed on and after 9/3/96 and before 11/6/96)
521.03 (offenses committed on and after 11/6/96)	OJI-CR 521.03 (offenses committed on and after 11/6/96)
521.04 (offenses committed before 9/3/96)	OJI-CR 521.04 (offenses committed before 9/3/96)
521.04 (offenses committed on and after 9/3/96)	OJI-CR 521.04 (offenses committed on and after 9/3/96)
521.05	OJI-CR 521.05
521.11	OJI-CR 521.11
521.12	OJI-CR 521.12
521.13 (offenses committed before 7/1/96)	OJI-CR 521.13 (offenses committed before 7/1/96)
521.13 (offenses committed on and after 7/1/96 and before 10/1/97)	OJI-CR 521.13 (offenses committed on and after 7/1/96 and before 10/1/97)
521.13 (offenses committed on and after 10/1/97)	OJI-CR 521.13 (offenses committed on and after 10/1/97)
521.14	OJI-CR 521.14
521.21	OJI-CR 521.21
521.22(A)	OJI-CR 521.22(A)
521.22(B)	OJI-CR 521.22(B)
521.22(C)	OJI-CR 521.22(C)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
521.22(D) (offenses committed before 3/18/97)	OJI-CR 521.22(D) (offenses committed before 3/18/97)
521.22(D) (offenses committed on and after 3/18/97)	OJI-CR 521.22(D) (offenses committed on and after 3/18/97)
521.22(E)	OJI-CR 521.22(E)
521.24	OJI-CR 521.24
521.31	OJI-CR 521.31
521.32 (offenses committed before 7/1/96)	OJI-CR 521.32 (offenses committed before 7/1/96)
521.32 (offenses committed on and after 7/1/96 and before 12/31/97)	OJI-CR 521.32 (offenses committed on and after 7/1/96 and before 12/31/97)
521.32 (offenses committed on and after 12/31/97)	OJI-CR 521.32 (offenses committed on and after 12/31/97)
521.321	OJI-CR 521.321
521.33 (offenses committed before 7/1/96)	OJI-CR 521.33 (offenses committed before 7/1/96)
521.33 (offenses committed on and after 7/1/96 but before 9/16/97)	OJI-CR 521.33 (offenses committed on and after 7/1/96 but before 9/16/97)
521.33 (offenses committed on and after 9/16/97)	OJI-CR 521.33 (offenses committed on and after 9/16/97)
521.34(A)(1)	OJI-CR 521.34(A)(1)
521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)	OJI-CR 521.34(A)(2) (offense committed by sexually violent predator on and after 1/1/97)
521.35(A)	OJI-CR 521.35(A)
521.35(B)	OJI-CR 521.35(B)
521.36	OJI-CR 521.36
521.38	OJI-CR 521.38 (offenses committed on and after 6/11/97 but before 4/4/07) OJI-CR 521.38 (offenses committed on and after 4/4/07)
521.41	OJI-CR 521.41
521.42	OJI-CR 521.42
521.43(A)	OJI-CR 521.43(A)
521.43(B)	OJI-CR 521.43(B)
521.43(C)	OJI-CR 521.43(C)
521.44(A)	OJI-CR 521.44(A)
521.44(B)	OJI-CR 521.44(B)
521.44(C)	OJI-CR 521.44(C)
521.44(D)	OJI-CR 521.44(D)
521.44(E)	OJI-CR 521.44(E)
521.45	OJI-CR 521.45
521.51(B)	OJI-CR 521.51(B)
521.51(C)	OJI-CR 521.51(C)
521.51(D)	OJI-CR 521.51(D)
521.51(E)	OJI-CR 521.51(E)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
521.52	OJI-CR 521.52
521.331	OJI-CR 521.331
523.01 (offenses committed before 7/1/96)	OJI-CR 523.01 (offenses committed before 7/1/96)
523.01 (offenses committed on and after 7/1/96)	OJI-CR 523.01 (offenses committed on and after 7/1/96)
523.02 (offenses committed before 7/1/96)	OJI-CR 523.02 (offenses committed before 7/1/96)
523.02 (offenses committed on and after 7/1/96)	OJI-CR 523.02 (offenses committed on and after 7/1/96)
523.03 (offenses committed before 7/1/96)	OJI-CR 523.03 (offenses committed before 7/1/96)
523.03 (offenses committed on and after 7/1/96)	OJI-CR 523.03 (offenses committed on and after 7/1/96)
523.12	OJI-CR 523.12
523.13 (offenses committed before 7/1/96)	OJI-CR 523.13 (offenses committed before 7/1/96)
523.13(A) (offenses committed on and after 7/1/96)	OJI-CR 523.13(A) (offenses committed on and after 7/1/96)
523.13(B) (offenses committed on and after 7/1/96)	OJI-CR 523.13(B) (offenses committed on and after 7/1/96)
523.15	OJI-CR 523.15
523.16	OJI-CR 523.16
523.17 (offenses committed before 7/1/96)	OJI-CR 523.17 (offenses committed before 7/1/96)
523.17 (offenses committed on and after 7/1/96)	OJI-CR 523.17 (offenses committed on and after 7/1/96)
523.19	OJI-CR 523.19
523.20 (offenses committed before 7/1/96)	OJI-CR 523.20 (offenses committed before 7/1/96)
523.20 (offenses committed on and after 7/1/96)	OJI-CR 523.20 (offenses committed on and after 7/1/96)
523.21 (offenses committed before 11/9/95)	OJI-CR 523.21 (offenses committed before 11/9/95)
523.21 (offenses committed on and after 11/9/95 but before 7/1/96)	OJI-CR 523.21 (offenses committed on and after 11/9/95 but before 7/1/96)
523.21 (offenses committed on and after 7/1/96)	OJI-CR 523.21 (offenses committed on and after 7/1/96)
523.211(B)	OJI-CR 523.211(B)
523.24 (offenses committed before 7/1/96)	OJI-CR 523.24 (offenses committed before 7/1/96)
523.24 (offenses committed on and after 7/1/96)	OJI-CR 523.24 (offenses committed on and after 7/1/96)
523.32(A)(1)	OJI-CR 523.32(A)(1)
523.32(A)(2)	OJI-CR 523.32(A)(2)
523.32(A)(3)	OJI-CR 523.32(A)(3)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
523.42 (offenses committed on and after 1/1/99)	OJI-CR 523.42 (offenses committed on and after 1/1/99)
523.44	OJI-CR 523.44
523.121 (offenses committed before 7/1/96)	OJI-CR 523.121 (offenses committed before 7/1/96)
523.121 (offenses committed on and after 7/1/96)	OJI-CR 523.121 (offenses committed on and after 7/1/96)
523.122 (offenses committed before 7/1/96)	OJI-CR 523.122 (offenses committed before 7/1/96)
523.122 (offenses committed on and after 7/1/96 but before 3/18/97)	OJI-CR 523.122 (offenses committed on and after 7/1/96 but before 3/18/97)
523.122 (offenses committed on and after 3/18/97 but before 8/6/99)	OJI-CR 523.122 (offenses committed on and after 3/18/97 but before 8/6/99)
523.122 (offenses committed on and after 8/6/99)	OJI-CR 523.122 (offenses committed on and after 8/6/99)
523.123(A)	OJI-CR 523.123(A)
523.123(B)	OJI-CR 523.123(B)
523.131	OJI-CR 523.131
523.161 (offenses committed before 7/1/96)	OJI-CR 523.161 (offenses committed before 7/1/96)
523.161 (offenses committed on and after 7/1/96 but before 8/6/99)	OJI-CR 523.161 (offenses committed on and after 7/1/96 but before 8/6/99)
523.161 (offenses committed on and after 8/6/99)	OJI-CR 523.161 (offenses committed on and after 8/6/99)
525.02 (offenses committed before 7/1/96)	OJI-CR 525.02 (offenses committed before 7/1/96)
525.02 (offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/1/96 but before 7/22/98)
525.02 (offenses committed on and after 7/22/98)	OJI-CR 525.02 (offenses committed on and after 7/22/98)
525.03 (offenses committed before 7/1/96)	OJI-CR 525.03 (offenses committed before 7/1/96)
525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 7/1/96 but before 2/13/2001)
525.03 (offenses committed on and after 2/13/2001)	OJI-CR 525.03 (offenses committed on and after 2/13/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)	OJI-CR 525.04 (offenses committed on and after 7/1/96 but before 8/7/2001)
525.041	OJI-CR 525.041
525.05 (offenses committed before 3/23/2000)	OJI-CR 525.05 (offenses committed before 3/23/2000)
525.05 (offenses committed on and after 3/23/2000)	OJI-CR 525.05 (offenses committed on and after 3/23/2000)
525.06	OJI-CR 525.06
525.07	OJI-CR 525.07



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.09(A) (offenses committed before 7/22/98)	OJI-CR 525.09(A) (offenses committed before 7/22/98)
525.09(A) (offenses committed on and after 7/22/98)	OJI-CR 525.09(A) (offenses committed on and after 7/22/98)
525.09(B)	OJI-CR 525.09(B)
525.11 (offenses committed before 7/1/96)	OJI-CR 525.11(offenses committed before 7/1/96)
525.11 (offenses committed on and after 7/1/96 but before 6/20/97)	OJI-CR 525.11 (offenses committed on and after 7/1/96 but before 6/20/97)
525.11 (offenses committed on and after 6/20/97)	OJI-CR 525.11 (offenses committed on and after 6/20/97)
525.12 (offenses committed before 7/1/96)	OJI-CR 525.12 (offenses committed before 7/1/96)
525.12 (offenses committed on and after 7/1/96)	OJI-CR 525.12 (offenses committed on and after 7/1/96)
525.13 (offenses committed before 7/1/96)	OJI-CR 525.13 (offenses committed before 7/1/96)
525.13 (offenses committed on and after 7/1/96)	OJI-CR 525.13 (offenses committed on and after 7/1/96)
525.14(C) (offenses committed before 7/1/96)	OJI-CR 525.14(C) (offenses committed before 7/1/96)
525.14(C) (offenses committed on and after 7/1/96)	OJI-CR 525.14(C) (offenses committed on and after 7/1/96)
525.22(offenses committed before 7/1/96)	OJI-CR 525.22 (offenses committed before 7/1/96)
525.22(offenses committed on and after 7/1/96)	OJI-CR 525.22(offenses committed on and after 7/1/96)
525.23 (offenses committed before 7/1/96)	OJI-CR 525.23 (offenses committed before 7/1/96)
525.23(offenses committed on and after 7/1/96 but before 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/1/96 but before 7/22/98)
525.23(offenses committed on and after 7/22/98)	OJI-CR 525.23(offenses committed on and after 7/22/98)
525.24	OJI-CR 525.24
525.31(offenses committed before 7/1/96)	OJI-CR 525.31(offenses committed before 7/1/96)
525.31(offenses committed on and after 7/1/96)	OJI-CR 525.31(offenses committed on and after 7/1/96)
525.32 (offenses committed before 7/1/96)	OJI-CR 525.32 (offenses committed before 7/1/96)
525.32(offenses committed on and after 7/1/96 but before 1/1/97)	OJI-CR 525.32(offenses committed on and after 7/1/96 but before 1/1/97)
525.32(offenses committed on and after 1/1/97)	OJI-CR 525.32(offenses committed on and after 1/1/97)
525.33	OJI-CR 525.33
525.36 (offenses committed before 7/1/96)	OJI-CR 525.36 (offenses committed before 7/1/96)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
525.36 (offenses committed on and after 7/1/96)	OJI-CR 525.36 (offenses committed on and after 7/1/96)
525.37(offenses committed before 7/1/96)	OJI-CR 525.37(offenses committed before 7/1/96)
525.37 (offenses committed on and after 7/1/96)	OJI-CR 525.37 (offenses committed on and after 7/1/96)
525.42	OJI-CR 525.42
527.01	OJI-CR 527.01
527.02(B)(1)	OJI-CR 527.02(B)(1)
527.02(B)(2)	OJI-CR 527.02(B)(2)
527.02(B)(3) (offenses committed on and after 3/15/01)	OJI-CR 527.02(B)(3) (offenses committed on and after 3/15/01)
527.02(C)	OJI-CR 527.02(C)
527.03	OJI-CR 527.03
527.11	OJI-CR 527.11
527.12	OJI-CR 527.12
527.13	OJI-CR 527.13
527.21	OJI-CR 527.21
527.24(B)	OJI-CR 527.24(B)
527.24(C)	OJI-CR 527.24(C)
527.27(A) (offenses committed on and after 10/09/01)	OJI-CR 527.27(A) (offenses committed on and after 10/09/01)
527.27(B) (offenses committed on and after 10/09/01)	OJI-CR 527.27(B) (offenses committed on and after 10/09/01)
533.92	OJI-CR 533.92
547.11(A)(1)(offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(1)(offenses committed on and after 1/1/04)
547.11(A)(2)-(6) (offenses committed on and after 1/1/04)	OJI-CR 547.11(A)(2)-(6) (offenses committed on and after 1/1/04)
547.11(B)(offenses committed on and after 1/1/04)	OJI-CR 547.11(B)(offenses committed on and after 1/1/04)
549.01(offenses committed on and after 1/1/04)	OJI-CR 709.01(offenses committed on and after 1/1/04)
549.02	OJI-CR 749.02
549.021	OJI-CR 749.021
549.03	OJI-CR 749.03
549.62(A)	OJI-CR 749.62(A)
549.62(B)	OJI-CR 749.62(B)
549.62(C)	OJI-CR 749.62(C)
549.62(D)	OJI-CR 749.62(D)
550.02 (offenses committed before 7/1/97)	OJI-CR 550.02 (offenses committed before 7/1/97)
550.04 (offenses committed on and after 7/1/97 but before 7/13/030)	OJI-CR 550.04 (offenses committed on and after 7/1/97 but before 7/13/030)
550.04 (offenses committed on and after 7/31/03)	OJI-CR 550.04 (offenses committed on and after 7/31/03)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
550.041 (offenses committed on and after 7/31/04)	OJI-CR 550.041 (offenses committed on and after 7/31/04)
550.05 (offenses committed before 7/1/97)	OJI-CR 550.05 (offenses committed before 7/1/97)
550.05 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.05 (offenses committed on and after 7/1/97 but before 7/31/03)
550.05 (offenses committed on and after 7/31/03 but before 4/29/05)	OJI-CR 550.05 (offenses committed on and after 7/31/03 but before 4/29/05)
550.05 (offenses committed on and after 4/29/05)	OJI-CR 550.05 (offenses committed on and after 4/29/05)
550.06 (offenses committed on and after 7/1/97 but before 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/1/97 but before 7/31/03)
550.06 (offenses committed on and after 7/31/03)	OJI-CR 550.06 (offenses committed on and after 7/31/03)
551.01	OJI-CR 551.01
551.03	OJI-CR 551.03
551.05	OJI-CR 551.05
551.07	OJI-CR 551.07
551.09	OJI-CR 551.09
551.11	OJI-CR 551.11
555.03	OJI-CR 559.03
710.11(A)(offenses committed before 1/1/04)	OJI-CR 710.11(A)(offenses committed before 1/1/04)
710.11(A) (offenses committed on and after 1/1/04)	OJI-CR 710.11(A) (offenses committed on and after 1/1/04)
710.11(B)(offenses committed before 1/1/04)	OJI-CR 710.11(B)(offenses committed before 1/1/04)
710.11(B) (offenses committed on and after 1/1/04)	OJI-CR 710.11(B) (offenses committed on and after 1/1/04)
710.12(A)(1)(a)(offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(a)(offenses committed before 1/1/04)
710.12(A)(1)(a) (offenses committed on and after 6/1/04)	OJI-CR 710.12(A)(1)(a) (offenses committed on and after 6/1/04)
710.12(A)(1)(b) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed before 1/1/04)
710.12(A)(1)(b) (offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(1)(b) (offenses committed on and after 1/1/04)
710.12(A)(2) (offenses committed before 1/1/04)	OJI-CR 710.12(A)(2) (offenses committed before 1/1/04)
710.12(A)(2)(offenses committed on and after 1/1/04)	OJI-CR 710.12(A)(2)(offenses committed on and after 1/1/04)
710.16(offenses committed before 1/1/04)	OJI-CR 710.16(offenses committed before 1/1/04)
710.16 (offenses committed before 1/1/04)	OJI-CR 710.16 (offenses committed before 1/1/04)
710.21 (offenses committed before 1/1/04)	OJI-CR 710.21 (offenses committed before 1/1/04)



<b>Previous Instruction Number</b>	<b>New Edition Instruction Number</b>
710.21(offenses committed on and after 1/1/04)	OJI-CR 710.21(offenses committed on and after 1/1/04)
711.19 (offenses committed before 1/1/04)	OJI-CR 711.19 (offenses committed before 1/1/04)
711.19 (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19 (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(offenses committed on and after 6/1/04)	OJI-CR 711.19(offenses committed on and after 6/1/04)
711.19(A) (offenses committed before 6/30/03)	OJI-CR 711.19(A) (offenses committed before 6/30/03)
711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/30/03 but before 1/1/04)
711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 1/1/04 but before 6/1/04)
711.19(A)(offenses committed on and after 6/1/04)	OJI-CR 711.19(A)(offenses committed on and after 6/1/04)
711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)	711.19(A)(1)(b)-(j) (offenses committed on and after 8/17/06)
711.19(A)(2) (offenses committed on and after 9/23/04)	OJI-CR 711.19(A)(2) (offenses committed on and after 9/23/04)
711.19(B) (offenses committed before 6/30/03)	OJI-CR 711.19(B) (offenses committed before 6/30/03)
711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)	OJI-CR 711.19(B) (offenses committed on and after 6/30/03 but before 1/1/04)
711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)	OJI-CR 711.19(B) (offenses committed on and after 1/1/04 but before 6/1/04)
711.19(B)(offenses committed on and after 6/1/04)	OJI-CR 711.19(B)(offenses committed on and after 6/1/04)
711.194	OJI-CR 711.194
711.203 (offenses committed before 1/1/04)	OJI-CR 711.203 (offenses committed before 1/1/04)
711.203 (offenses committed on and after 1/1/04)	OJI-CR 711.203 (offenses committed on and after 1/1/04)





# Chapter CV 315

## DAMAGES

- CV 315.01 Personal injury: tort actions (claims arising before 4/9/03) *[Rev. 8/6/14]*
- CV 315.01 Personal injury: tort actions (claims arising on and after 4/9/03 but before 4/7/05) *[Rev. 5/3/14]*
- CV 315.01 Personal injury: tort actions (claims arising on and after 4/7/05) *[Rev. 8/6/14]*
- CV 315.03 Consortium *[Rev. 12-10-11]*
- CV 315.05 Mathematical formula *[Rev. 12-11-10]*
- CV 315.07 Miscarriage; stillbirth *[Rev. 12-10-11]*
- CV 315.09 Future damages; periodic payments in non-comparative negligence tort actions; one defendant (claims arising on and after 1/5/88) *[Rev. 2/27/21]*
- CV 315.11 Future damages; periodic payments in comparative negligence tort actions; two defendants, interrogatories on comparative negligence required (claims arising on and after 1/5/88) *[Rev. 5-6-06]*
- CV 315.13 Tort actions based on claims for future damages; cost of annuity *[Rev. 5-6-06]*
- CV 315.15 Aggravation; acceleration *[Rev. 12-10-11]*
- CV 315.17 Earnings *[Rev. 12-10-11]*
- CV 315.19 Automobile; personal property *[Rev. 12-10-11]*
- CV 315.21 Loss of use *[Rev. 12-10-11]*
- CV 315.23 Personal property without market value *[Rev. 12-10-11]*
- CV 315.25 Subrogation *[Rev. 1-21-12]*
- CV 315.27 Recovery limited, no joinder - husband, wife *[Rev. 1-21-12]*
- CV 315.31 Injury and expenses - joint trial of separate claims *[Rev. 1-21-12]*
- CV 315.33 Multiple defendants *[Rev. 1-21-12]*
- CV 315.35 Real estate *[Rev. 3-28-09]*
- CV 315.37 Punitive damages: certain tort actions (claims arising on and after 4/7/05) *[Rev. 9/12/20]*
- CV 315.39 Reasonable attorney fees *[Rev. 9/12/20]*
- CV 315.41 Quotient verdict *[Rev. 12-11-10]*
- CV 315.43 Mortality table *[Rev. 12-11-10]*
- CV 315.45 Present value of future damage; income taxes *[Rev. 10/3/15]*
- CV 315.49 Wrongful death, compensatory damages *[Rev. 1-21-12]*
- CV 315.51 Duty to mitigate *[Rev. 12-11-10]*
- CV 315.53 Nominal damages *[Rev. 1-21-12]*

**CV 315.01 Personal injury: tort actions (claims arising before 4/9/03) [Rev. 8/6/14]**

1. **GENERAL.** If you find for the plaintiff, you will decide by the greater weight of the evidence an amount of money that will reasonably compensate the plaintiff for the actual (injury) (damage) proximately caused by the negligence of the defendant.
2. **CONSIDERATION.** In deciding this amount, you will consider the nature and extent of the injury; the effect upon physical health; the pain and suffering experienced; the ability or inability to perform usual activities; and (the earnings that were lost) (the reasonable cost of necessary medical and hospital expenses incurred). From these you will determine what sum will compensate the plaintiff for the injury to date.
3. **REASONABLE VALUE (ADDITIONAL).** In determining the reasonable value of medical, hospital or other related care, treatment, services, products or accommodations, you shall consider all of the evidence submitted. Both the original bill and the amount accepted as full payment may be considered along with all other evidence to determine the reasonable value.

**COMMENT**

Drawn from *Robinson v. Bates*, 112 Ohio St.3d 17, 2006-Ohio-6362.

4. **PERMANENT INJURY AND EXPENSE.** You will note that the plaintiff also claims that the (injury is permanent) (plaintiff will incur future expense) (plaintiff will experience pain or disability in the future). As to such claim(s), no damage may be found except that which is reasonably certain to exist as a proximate result of the (injury) (collision).
5. **COLLATERAL SOURCES: INSURANCE.** In deciding damages, you must not consider whether either party had insurance. Any assumption that either party had or did not have insurance is not relevant and may be wrong. You must not add to or subtract from any award based upon any assumption regarding insurance. You must resolve all issues presented to you only on the evidence admitted and the law in these instructions.
6. **LOSS OF ABILITY TO PERFORM USUAL FUNCTIONS: PERMANENT DISABILITY.**

**COMMENT**

In *Fantozzi v. Sandusky Cement Prod. Co.*, 64 Ohio St.3d 601, 608 (1992), the Court stated that the following instructions shall be given to the jury, “[i]n the appropriate case, where there have been allegations of an evidence adduced on the

*(Text continued on page 85)*



2. PARENT-CHILD; CHILD-PARENT. If you find for (*insert name of plaintiff parent/child*), you may award an amount that will reasonably compensate (*insert name of plaintiff parent/child*) for damages that you find (resulted) (will result) from a loss of (the child's) (parental) consortium.

#### COMMENT

A parent may recover for loss of a minor child's (filial) consortium. *Gallimore v. Children's Hosp. Med. Ctr.*, 67 Ohio St.3d 244, 1993-Ohio-205. Children, whether adults or minors, may recover for loss of parental consortium. *Rolf v. Tri State Motor Transit Co.*, 91 Ohio St.3d 380, 2001-Ohio-44.

3. CONSORTIUM. Consortium includes services, society, companionship, comfort, (sexual relations), love, and solace.

#### COMMENT

Drawn from *Bowen v. Kil-Kare, Inc.*, 63 Ohio St.3d 84 (1992).

### CV 315.05 Mathematical formula [Rev. 12-11-10]

1. FORMULA AS ARGUMENT. You cannot consider as evidence the suggestion of counsel that you use a unit value or mathematical formula to compensate for pain and suffering or disability. There is no recognized unit value for pain and suffering or disability. Deciding compensation for pain and suffering or disability is solely your responsibility.

#### COMMENT

It is permissible for counsel in the opening portion of final argument to suggest a monetary amount and to apply the "mathematical formula" to illustrate the basis for the amount sought for pain and suffering, if the court instructs the jury that such argument and the amount assumed as the unit value are not evidence.

It is improper for counsel for the plaintiff to make such suggestion for the first time in the rebuttal portion of final argument. If first attempted in closing argument, counsel for the defendant must be granted time to "counter-argue." *Grossnickle v. Germantown* (1965), 3 Ohio St.2d 96. The Supreme Court did not explain why failure to discuss the subject in the opening portion of final argument constituted impropriety, and it did not suggest what other arguments might be similarly presented.

### CV 315.07 Miscarriage; stillbirth [Rev. 12-10-11]

1. GENERAL. A woman who suffers a (miscarriage) (stillbirth) because of injuries negligently inflicted by another is entitled to recover damages that will reasonably compensate her for the physical and mental pain and suffering (and any permanent impairment of her health) resulting from the (miscarriage) (stillbirth) proximately caused by the negligence.

2. GRIEF. You cannot consider additional factors in your computation of damages.

You cannot consider such items as grief for the loss of the child, including the loss of the society and enjoyment the child might have provided. (These damages should only be considered under the plaintiff's claim for wrongful death.)

#### COMMENT

*Stidam v. Ashmore*, 109 Ohio App. 431 (12th Dist. 1959), recognizes a cause of action for the wrongful death of a viable, unborn child. *See also* OJI-CV 315.47, OJI-CV 315.49.

The language included in parentheses should only be given to the jury when there is a concurrent claim for wrongful death of the viable fetus.

#### **CV 315.09 Future damages; periodic payments in non-comparative negligence tort actions; one defendant (claims arising on and after 1/5/88) [Rev. 2/27/21]**

#### COMMENT

A jury may be required to answer interrogatories in trials of certain tort actions as defined in R.C. 2323.56(A)(6) and (H) based on claims arising and conduct occurring on and after January 5, 1988, and commenced on and after that date. R.C. 2323.56. If the plaintiff makes a good faith claim for future damages in excess of \$200,000, the court must, on the motion of the plaintiff or the defendant in question, instruct the jury to return a general verdict, and if that verdict is for the plaintiff, to answer specific interrogatories. R.C. 2323.56 does not apply to (1) actions for other than injury to person, (2) tort actions against political subdivisions pursuant to R.C. Chapter 2744, (3) claims against the state in the Court of Claims, or (4) medical and allied claims as defined in R.C. 2305.113(E)(3), formerly R.C. 2305.11(D) (governed by R.C. 2323.55, formerly R.C. 2323.57).

For interrogatories on future damages in cases involving comparative negligence or cases involving more than one defendant, see OJI-CV 403.05 and OJI-CV 403.07.

The following instructions assume that the jury will have a form of general verdict separate from the interrogatories.

1. **GENERAL.** If you decide by the greater weight of the evidence that the plaintiff is entitled to recover, you will answer written questions called interrogatories about damages.

#### COMMENT

OJI-CV 321.01.

2. **NUMBER OF JURORS TO REACH DECISIONS.** It is necessary that at least (six) (three-fourths) of the same jurors agree on the answers to the questions and on the general verdict. Those of you who agree will sign in ink the answers to the questions and the general verdict.



## 3. INTERROGATORIES.

(A) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES, PAST AND FUTURE, SUFFERED BY THE PLAINTIFF.

STATE YOUR ANSWER IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

Move to Interrogatory (B).

(B) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (A) IS PAST DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?

STATE YOUR ANSWER IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

Move to Interrogatory (C).

(C) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (A) IS FUTURE DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?

STATE YOUR ANSWER IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are future damages, move to Interrogatory (D). If you find that there are no future damages, do not answer the remaining Interrogatories, complete the verdict form for the plaintiff, and report to the court that you have finished your deliberations.

(D) WHAT ARE THE PORTIONS OF THE FUTURE DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (C) THAT FALL INTO THE FOLLOWING:

(1) FUTURE ECONOMIC LOSS ..... \$ \_\_\_\_\_

(2) FUTURE NONECONOMIC LOSS ..... \$ \_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (C).

_____	_____
_____	_____
_____	_____

Move to Interrogatory (E).

(E) WHAT ARE THE PORTIONS, IF ANY, OF FUTURE ECONOMIC LOSS SHOWN IN YOUR ANSWER TO INTERROGATORY (D)(1), IF ANY, THAT FALL INTO THE FOLLOWING:

(1) WAGES, SALARIES OR OTHER LOST COMPENSATION (EARNING CAPACITY) (FRINGE BENEFITS) ..... \$\_\_\_\_\_

(2) (EXPENDITURES) (EXPENSES) (COSTS) FOR MEDICAL CARE OR TREATMENT, REHABILITATION SERVICES, OR OTHER CARE, TREATMENT, SERVICES, PRODUCTS, OR ACCOMMODATIONS ..... \$\_\_\_\_\_

(3) ANY OTHER (EXPENDITURES) (EXPENSES) (COSTS) ..... \$\_\_\_\_\_

The total of future economic loss must equal your answer to Interrogatory (D)(1).

TOTAL ..... \$\_\_\_\_\_


#### COMMENT

Drawn from R.C. 2323.56(B)(1).

4. PAST AND FUTURE DAMAGES. Damages that (result from) (are caused by) injury to the person are divided into past and future damages. “Past damages” are those that have accrued up to the time you reach your verdict. “Future damages” are those that are reasonably certain to occur after you reach your verdict.

#### COMMENT

Drawn from R.C. 2323.56(A)(2).

5. ECONOMIC LOSS. R.C. 2323.56(A)(1).

6. NONECONOMIC LOSS. R.C. 2323.56(A)(4).

7. FUTURE DAMAGES: COST OF ANNUITY (OPTIONAL). OJI-CV 315.13.



8. GENERAL VERDICT. OJI-CV 403.01 § 4 (claims arising before 1/5/88).

**CV 315.11 Future damages; periodic payments in comparative negligence tort actions; two defendants, interrogatories on comparative negligence required (claims arising on and after 1/5/88) [Rev. 5-6-06]**

#### COMMENT

The instructions at OJI-CV 403.05 will serve in cases with two defendants, provided the terms referring to the defendant are pluralized. For an example of the  
*(Text continued on page 99)*





reasonable cost of these necessary repairs. (Evidence of the diminution of the fair market value of the property caused by the damage may be considered in deciding the reasonableness of the cost of repairs.) (If, however, the property is commercial and these repair costs exceed the difference in the fair market value of the property immediately before and after the damage, then this difference in value is all that the owner may recover.)

#### COMMENT

*Martin v. Design Const.*, 2009-Ohio-1; *Ohio Collieries Co. v. Cocke* (1923), 107 Ohio St. 238.

### CV 315.37 Punitive damages: certain tort actions (claims arising on and after 4/7/05) [Rev. 9/12/20]

#### COMMENT

Under R.C. 2315.21(B), effective 4/7/05, in a state-law tort action where the plaintiff seeks both compensatory and punitive damages, on the motion of any party, the court shall bifurcate the trial into two stages. If the jury finds that the plaintiff is entitled to an award of compensatory damages, the trial will enter the second stage. In the second stage, the jury will consider evidence that relates to the plaintiff's claim for punitive damages and determine whether the plaintiff is entitled to an award of punitive damages and the amount of those damages.

If the jury returns a verdict that awards punitive damages to the plaintiff, the court shall enter judgment on the punitive damages verdict based on the restrictions and limitations imposed by R.C. 2315.21(D). Pursuant to R.C. 2315.21(F), the trial court, trial counsel, and witnesses are prohibited from disclosing the statutory limitations on punitive damages to the jury.

Note that R.C. 2315.21(D)(6) removes the caps if the defendant is found to be acting with one or more of the culpable mental states of purposely and knowingly as described in R.C. 2901.22 and when the defendant has been convicted of or pleaded guilty to a criminal offense that is a felony, that had as an element of the offense one or more of the culpable mental states of purposely and knowingly as described in that section, and that is the basis of the tort action. If this section is applicable, the court will have to draft additional interrogatories for the jury to answer.

See R.C. 2307.80 for punitive damages in product liability claims.

The supreme courts of the United States and Ohio addressed the constitutionality of punitive damages in *Gore v. BMW of North America, Inc.*, 517 U.S. 559 (1996); *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408 (2003); *Dardinger v. Anthem Blue Cross & Blue Shield*, 98 Ohio St.3d 77, 2002-Ohio-7113; and *Barnes v. University Hospitals of Cleveland*, 119 Ohio St.3d 173, 2008-Ohio-3344. The Supreme Court of Ohio in *Barnes* held that a court reviewing an award of punitive damages must independently analyze three factors to determine whether the award is constitutional: (1) the degree of reprehensibility of the party's conduct; (2) the ratio of punitive damages to the actual harm inflicted; and (3) the difference

between the award and civil sanctions authorized for similar misconduct. The factors controlling an award of punitive damages apply to post-verdict review by trial and appellate courts and should not be included in jury instructions.

1. GENERAL. Because you found that the plaintiff is entitled to compensatory damages against the defendant, you must now consider whether you will separately award punitive damages.

#### COMMENT

If the issue of punitive damages is not bifurcated, the instruction must be tailored accordingly. The Supreme Court of Ohio has held that R.C. 2315.21(B) creates a substantive right to bifurcation that supersedes Civ.R. 42(B). *Havel v. Joseph*, 131 Ohio St.3d 235, 2012-Ohio-552.

2. MALICE; FRAUD; OR PRINCIPAL'S AUTHORIZATION, PARTICIPATION, OR RATIFICATION. Punitive damages may be awarded against the defendant as a punishment and to discourage others from committing similar wrongful acts. You are not required to award punitive damages to the plaintiff, and you may not do so unless you find that the plaintiff has met his/her/its burden to prove by clear and convincing evidence that the

*(Use appropriate alternative[s])*

(A) defendant's actions demonstrated actual malice;

*(or)*

(B) defendant's actions demonstrated aggravated or egregious fraud;

*(or)*

(C) defendant, as principal or master, knowingly (authorized) (participated in) (ratified) the actions or omissions of an agent or servant that demonstrated (actual malice) ([aggravated] [egregious] fraud).

#### COMMENT

Drawn from 2315.21(C); *Columbus Finance, Inc. v. Howard*, 42 Ohio St.2d 178 (1975).

3. ACTUAL MALICE. "Actual malice" necessary for an award of punitive damages is

*(Use appropriate alternative[s])*

(A) a state of mind characterized by hatred, ill will, or a spirit of revenge;

*(or)*

(B) a conscious disregard for the rights and safety of another person that has a great probability of causing substantial harm.



**COMMENT**

Drawn from *Preston v. Murty*, 32 Ohio St.3d 334 (1987); *Moskovitz, Exr. v. Mt. Sinai Med. Ctr.*, 69 Ohio St.3d 638 (1994).

The statute uses the term “malice,” while the Supreme Court of Ohio cases recite a standard for “actual malice.” The Committee believes it is better to use the case law term and its common-law definition where there is no evidence that the General Assembly intended a different meaning.

4. **SUBSTANTIAL.** “Substantial” means major or significant and not trifling or small.
5. **AGGRAVATED OR EGREGIOUS FRAUD.** Fraud is “aggravated” if it is accompanied by the existence of malice or ill will. Fraud is “egregious” if the fraudulent wrongdoing is particularly gross or malicious.

**COMMENT**

Drawn from *Charles R. Combs Trucking, Inc. v. Internatl. Harvester Co.*, 12 Ohio St.3d 241 (1984); *Logsdon v. Graham Ford Co.*, 54 Ohio St.2d 336 (1978).

6. **DAMAGES TO NON-PARTIES (ADDITIONAL).** Evidence was introduced that (*insert name[s] of defendant[s]*) conduct has resulted in harm to persons other than (*insert name[s] of plaintiff[s]*). You should consider this evidence only for the purpose of helping you decide whether (*insert name[s] of defendant[s]*) showed a conscious disregard for the rights and safety of other persons that had a great probability of causing substantial harm. However, you are not to punish (*insert name[s] of defendant[s]*) for the direct harm his/her/its alleged misconduct caused to other persons.

**COMMENT**

Drawn from *State Farm v. Campbell*, 538 U.S. 408 (2003); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

7. **DEFENDANT’S OUT-OF-STATE CONDUCT (ADDITIONAL).** Evidence was introduced of (*insert name[s] of defendant[s]*) conduct in (another state) (other states). You should consider this evidence only for the purpose of helping you decide whether (*insert name[s] of defendant[s]*) showed a conscious disregard for the rights and safety of other persons that had a great probability of causing substantial harm. However, you are not to punish (*insert name[s] of defendant[s]*) for the direct harm his/her/its alleged misconduct caused to other persons.

**COMMENT**

Drawn from *State Farm v. Campbell*, 538 U.S. 408 (2003); *Philip Morris USA v. Williams*, 549 U.S. 346 (2007).

8. **PRINCIPAL AND AGENT.** OJI-CV Chapter 423.

9. EMPLOYER AND EMPLOYEE. OJI-CV Chapter 537.

10. CLEAR AND CONVINCING EVIDENCE. OJI-CV 303.07; R.C. 2315.21(D)(4).

11. AMOUNT OF PUNITIVE DAMAGES. If you award punitive damages, it should be presumed that the plaintiff has been made whole for his/her/its injuries by the award of compensatory damages. In determining the amount of punitive damages, you may consider all of the following:

- (A) the harm caused was physical as opposed to economic;
- (B) the tortious conduct evinced an indifference or a reckless disregard of the health or safety of others;
- (C) the target of the conduct had financial vulnerability;
- (D) the conduct involved repeated actions or was an isolated incident; and
- (E) the harm was a result of intentional malice, trickery or deceit, or mere accident. The amount you award should be fair and reasonable and should not be influenced by passion or prejudice.

#### COMMENT

Drawn from *State Farm v. Campbell*, 538 U.S. 408 (2003).

12. ATTORNEY FEES. If you decide that the defendant is liable for punitive damages, you must also decide whether the defendant is liable for the reasonable attorney fees of counsel employed by the plaintiff in the prosecution of this action.

*(Use appropriate alternative)*

(A) JUDGE DETERMINES FEES. If you decide that the defendant is liable for attorney fees, the court will determine the amount;

*(or)*

(B) JURY DETERMINES FEES. OJI-CV 315.39.

13. VERDICT FORMS.

(A) PUNITIVE DAMAGES. We, the jury, find that the plaintiff \_\_\_\_\_ is \_\_\_\_\_ is not entitled to an award of punitive damages. Punitive Damage Amount \$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

At least six (6) members of the jury must agree in order to reach a verdict on this issue.

(B) ATTORNEY FEES We, the jury, find attorney fees \_\_\_\_\_ should



\_\_\_\_\_ should not be awarded against the defendant.

_____	_____
_____	_____
_____	_____
_____	_____

At least six (6) members of the jury must agree in order to reach a verdict on this issue.

(C) ATTORNEY FEES ATTORNEY FEES (OPTIONAL) We, the jury, find attorney fees \_\_\_\_\_ should \_\_\_\_\_ should not be awarded against the defendant. Amount of Attorney Fees \$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

At least six (6) members of the jury must agree in order to reach a verdict on this issue.

#### CV 315.39 Reasonable attorney fees [Rev. 9/12/20]

#### COMMENT

Under the “American rule,” each party is responsible for its own attorney fees, unless an exception applies. One exception to the American rule affords the trial court the discretion to order the losing party to pay the reasonable attorney fees of the prevailing party as an element of compensatory damages when the jury finds that punitive damages are warranted. *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056. Other exceptions to the American rule include when the right to recover attorney fees is set forth in a statute or in a valid fee-shifting provision in a contract.

A litigant does not have a constitutional right to a trial by jury as to the determination of whether, or in what amount, attorney fees should be awarded in a tort action. When the jury awards punitive damages and determines that attorney fees should be awarded, the amount of those fees shall be determined by the trial judge who may, in his or her discretion, submit the question of the amount of fees to the jury. *Digital & Analog Design Corp. v. North Supply Co.*, 63 Ohio St.3d 657 (1992), paragraphs two and three of the syllabus, overruled on other grounds by *Zoppo v. Homestead Ins. Co.*, 71 Ohio St.3d 552, 1994-Ohio-461. See also R.C. 2315.21(D); R.C. 2315.18.

1. GENERAL. (*Insert name of prevailing party*) is seeking an award of reasonable attorney fees to be paid by (*insert name of applicable party*). (*Insert name of prevailing party*) has the burden of proving by the greater weight of the evidence the reasonable amount of attorney fees to be awarded.

2. INITIAL CALCULATION OF ATTORNEY FEES. In deciding the reasonable amount of attorney fees to award (*insert name of prevailing party*), you must multiply what you decide is the reasonable hourly rate of (*insert name of prevailing party*)’s attorney(s) by what you decide is the reasonable number of hours worked representing (*insert name of prevailing party*) in this case.

#### COMMENT

Drawn from *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056.

Calculating attorney fees by multiplying the reasonable hourly rate by the number of hours worked is known as the lodestar method. *Id.*

3. REASONABLENESS. In determining the reasonableness of the hourly rate and the hours worked, you may consider any of the following factors:

- (A) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (B) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (C) the fee customarily charged in the locality for similar legal services;
- (D) the amount involved and the results obtained;
- (E) the time limitations imposed by the client or by the circumstances;
- (F) the nature and length of the professional relationship with the client;
- (G) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (H) the structure of the fee, meaning whether the fee is fixed, hourly, or contingent.

#### COMMENT

Drawn from *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056; Prof.Cond.R. 1.5.

4. REASONABLE HOURLY RATE. A reasonable hourly rate is the prevailing market rate in the relevant community for the services rendered by the attorney(s) given the complexity of the issues and the experience of the attorney(s) involved.

#### COMMENT

Drawn from *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056, citing *Blum v. Stenson*, 465 U.S. 886 (1984) and *State ex. rel. Harris v. Rubino*, 156 Ohio St.3d 296, 2018-Ohio-5109.

5. PREVAILING MARKET RATE. The prevailing market rate can often be calcu-



lated based on a firm's normal billing rate because, in most cases, billing rates reflect market rates.

#### COMMENT

Drawn from *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056, citing *Gulfstream III Assocs., Inc. v. Gulfstream Aerospace Corp.*, 995 F.2d 414 (3d Cir.1993).

#### 6. RELEVANT COMMUNITY.

#### COMMENT

Ohio has not adopted a definition of "relevant community." Federal law indicates that the relevant community is the legal community within the court's territorial jurisdiction. *See, e.g., Adock-Ladd v. Secy. of Treasury*, 227 F.3d 343 (6th Cir.2000).

7. REASONABLE NUMBER OF HOURS WORKED. In deciding the reasonable number of hours worked, you should exclude hours that are excessive, redundant, or otherwise unnecessary.

#### COMMENT

Drawn from *State ex. rel. Harris v. Rubino*, 156 Ohio St.3d 296, 2018-Ohio-5109.

8. ENHANCEMENT (ADDITIONAL). (*Insert name of prevailing party*) is seeking reasonable attorney fees above the calculation of the reasonable hourly rate multiplied by the reasonable number of hours worked. To obtain an enhancement, (*insert name of prevailing party*) must prove by the greater weight of the evidence that an upward adjustment is appropriate based on a factor not already included in the initial calculation. For example, an enhancement might be appropriate when the method used in deciding the hourly rate employed in the initial calculation does not adequately measure the true market value of the attorney's services, as demonstrated in part during the litigation. If you decide to enhance the fee obtained through your initial calculation, you must provide your rationale justifying the modification by answering the (interrogatory) (interrogatories) provided.

#### COMMENT

Drawn from *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056, citing *Perdue v. Kenny A.*, 559 U.S. 542 (2010).

Although the court has the discretion to enhance the lodestar calculation of attorney fees, the lodestar is presumptively reasonable and enhancements should rarely be granted. Enhancements should be granted only when the prevailing party produces objective and specific evidence that enhancement is necessary to provide reasonable compensation because the lodestar did not take into account a factor that may be properly considered in determining a reasonable fee. *Phoenix Lighting*



*Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056, citing *Perdue v. Kenny A.*, 559 U.S. 542 (2010). Nearly all of the factors listed in Prof.Cond.R. 1.5(a) should be subsumed in the lodestar calculation without requiring enhancements. *Id.*

## 9. TIME VALUE OF MONEY (OPTIONAL).

### COMMENT

In *Phoenix Lighting Group, L.L.C. v. Genlyte Thomas Group, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056, the Supreme Court of Ohio held that a party seeking an enhancement to the calculation of attorney fees based on the lodestar calculation bears the burden of presenting specific evidence to establish that an adjustment is appropriate based on a factor not already subsumed within the lodestar. The Court did not identify what circumstances constitute an enhancement factor but agreed with the United States Supreme Court's conclusion that, in a rare and exceptional case, the lodestar may be enhanced when it can be shown that superior results are the result of superior performance and that the lodestar does not adequately measure the true market value of the attorney's services. *See id.* In a separate concurrence, one justice identified a possible enhancement factor: the time value of money. *See Phoenix Lighting Group*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056 (Fischer, J., concurring). No controlling opinion in Ohio expressly endorses this type of "delay enhancement."

Whether the time value of money is an attorney fee enhancement factor under Ohio law is unsettled. Although no justice joined in Justice Fischer's concurrence, the Supreme Court of Ohio has repeatedly turned to federal case law to inform Ohio's approach to attorney fee awards. Multiple federal courts have recognized the time value of money as a possible enhancement factor. *See, e.g., Ohio-Sealy Mattress Mfg. Co. v. Sealy, Inc.*, 776 F.2d 646 (7th Cir.1985). Other federal courts have treated it as the lodestar factor that permits the use of current hourly rates for past work. *See, e.g., Grant v. Martinez*, 973 F.2d 96 (2d Cir.1992); *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292 (11th Cir.1988). The United States Supreme Court has held that "an enhancement for delay in payment is, where appropriate, part of a 'reasonable attorney's fee.'" *Missouri v. Jenkins*, 491 U.S. 274, 282 (1989). That holding did not definitively pick one treatment but stated that that "an appropriate adjustment for delay in payment" could be "by the application of current rather than historic hourly rates or otherwise." *Id.* at 284.

The Committee takes no position on whether a time-value-of-money enhancement is part of Ohio law. If the trial judge decides that it is, the Committee believes that whether the time value of money should permit use of current rates in calculating the lodestar or justify a multiplier to enhance the lodestar likely would depend on the facts of the litigation involved. The Committee also believes that the prevailing party would have to produce objective and specific evidence that the time value of money justifies an enhancement before such an instruction may be given.

If the trial judge elects to treat the time value of money as a factor in calculating the lodestar, the trial court should modify the lodestar instructions as needed. If the trial court elects to treat the time value of money as a multiplier to the lodestar, the



following possible instruction tracks Justice Fischer's concurrence:

In deciding whether an enhancement to the initial calculation of attorney fees is appropriate, you may consider that (a prevailing party who has paid his/her/its attorneys over the course of the lawsuit) (an attorney working on a contingent-fee basis) may have been deprived of the use of his/her/its money throughout the lawsuit. To reasonably compensate that (party) (attorney) when he/she/it is awarded attorney fees, you may award the present value of the attorney fees and may consider the period of time the attorney worked on the case and any unreasonable delays caused by the parties, as well as the type of fee agreement entered into between the attorney and (*insert name of prevailing party*).

## 10. INTERROGATORIES.

### COMMENT

A trial court must provide a reasonably specific explanation for all aspects of an attorney fee determination. *Phoenix Lighting Group*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-1056. Additionally, any modification to the lodestar calculation "must be accompanied by a rationale justifying the modification." *Id.* ¶ 20. Therefore, if the trial judge submits the amount of attorney fees to the jury, the judge should draft appropriate interrogatories depending on the specific fee-related issues in contention to provide a specified rationale for the fee award.

### CV 315.41 Quotient verdict [Rev. 12-11-10]

1. If you find for the plaintiff, you may not agree in advance to accept an average figure as the amount of your verdict. If a figure is reached by obtaining an average, such amount is not a proper verdict unless each juror thereafter individually exercises his or her judgment and decides whether he or she will accept such amount. At least six (6) members of the jury must individually accept the amount before it can be a fair and just verdict.

### CV 315.43 Mortality table [Rev. 12-11-10]

1. PERMANENT INJURY. If you find that plaintiff's injury is permanent, you may consider how long the plaintiff is likely to live.

2. MORTALITY TABLE. The evidence of the life expectancy of people (*insert age of plaintiff*) years of age is an estimate of the average remaining length of life of all persons in this country based upon a limited number of persons of that age. It is an incomplete figure and does not indicate the future life-span of any individual. Such evidence is not conclusive; however, you may consider it along with all the other evidence.

3. DEATH. If you find for the plaintiff, you may consider what the probable normal length of life of the decedent would have been.

### CV 315.45 Present value of future damage; income taxes [Rev. 10/3/15]

1. PRESENT PECUNIARY VALUE. In the event you find for the plaintiff, the

measure of any future damage is the present (loss in dollars) (pecuniary loss) that the plaintiff with reasonable certainty will sustain in the future and that is capable of measurement by the present value of money. You may not speculate upon any change in the value of the dollar.

*(Text continued on page 115)*



# Chapter CV 319

## DELIBERATIONS

CV 319.07     Deadlock [Rev. 8/15/18]

CV 319.07     Deadlock [Rev. 8/15/18]

1. CAREFUL CONSIDERATION. I am going to give you an instruction that courts in Ohio give in this situation. The process of discussion and deliberation in the jury room is necessarily slow and requires consideration and patience. The secrecy that surrounds your efforts prevents others, including the court, from knowing when your efforts will result in a verdict. If, after following this instruction, you are still unable to reach a verdict, please advise the court in writing.

2. DEADLOCKED. In a large number of cases, absolute certainty cannot be attained or expected. Although the verdict must reflect the verdict of each individual juror and not mere consent to the conclusion of the other jurors, each question submitted to you should be examined with proper regard and deference to the opinions of other jurors. You should consider it desirable that the case be decided. You are selected in the same manner, and from the same source, as any future jury would be. There is no reason to believe the case will ever be submitted to a jury more capable, impartial, or intelligent than this one. Likewise, there is no reason to believe that more or clearer evidence will be produced by either side. It is your duty to decide the case, if you can honestly do so. You should listen to one another's arguments with a disposition to be persuaded. Do not hesitate to reexamine your views and change your position if you are convinced it is wrong. As there is disagreement, all jurors should reexamine their positions, given that a verdict has not been reached. Jurors more in favor of the plaintiff should consider whether their position is correct considering that it is not shared by others, equally honest, who have heard the same evidence, with the same desire to arrive at the truth, and under the same oath. Likewise, jurors more in favor of the defendant should ask themselves whether their position is correct considering that it is not shared by other jurors.

### COMMENT

The foregoing is a modification of the supplemental instruction approved by the Supreme Court of Ohio in *State v. Howard*, 42 Ohio St.3d 18 (1989), paragraph two of the syllabus.

3. VERDICT IMPOSSIBLE. I have been advised that you cannot reach an agreement within a reasonable time. (*Read the note from the jury indicating that the jury cannot reach an agreement.*) (*Ask the foreperson to affirm that the jury cannot reach an agreement.*)

4. FAILURE TO ANSWER INTERROGATORIES. You have reported to the Court that at least six of you cannot agree on an answer to Interrogatory (*insert number of interrogatory*). The Court urges each of you to exert every possible effort so that six or more of you answer all the Interrogatories you are required to answer in order to arrive at a verdict. Please return to the jury room for further deliberations.

5. MISTRIAL DECLARED. Because you are unable to reach a verdict, I declare this case a mistrial. I want to express my appreciation for your sincere, conscientious efforts. Members of the jury, you are discharged from further duty in this case.

#### COMMENT

*See McBride, The Art of Instructing The Jury* (1969), Section 3.61 et seq.

*(Text continued on page 125)*



# Chapter CV 321

## INTERROGATORIES

CV 321.01 Interrogatories [Rev. 11/7/20]

CV 321.01 Interrogatories [Rev. 11/7/20]

### COMMENT

Due to the complexities of interrogatories, they should first be reviewed with counsel. The Committee believes that the jurors will better understand the interrogatories if the court reviews them in detail while each juror has a copy of the interrogatories in hand. Each juror should also take this personal copy to the deliberations room. The foreperson must be cautioned that only one set of interrogatories should be completed and returned to the court with the general verdict.

1. INTRODUCTION TO INTERROGATORIES. You will be given written questions called interrogatories. You must answer them in writing, starting with the first question. You must follow carefully the directions about how to proceed because the directions will tell you what questions to answer and whether to sign the general verdict for the plaintiff or for the defendant.

A question is answered when at least (six) (three-fourths) of the jurors agree. All who agree must sign. If (six) (three-fourths) jurors cannot agree on an answer, you should report this to the court.

The foreperson shall return to the court only one completed set of interrogatories along with the verdict forms.

[Next Page is 126.3]

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# Chapter CV 323

## VERDICTS

CV 323.01 Basic formats (one plaintiff, one defendant) [Rev. 11/7/20]

CV 323.03 Verdict for will contest [Rev. 11/7/20]

CV 323.05 Verdict for eminent domain [Rev. 11/7/20]

CV 323.01 Basic formats (one plaintiff, one defendant) [Rev. 11/7/20]

### COMMENT

Civ.R. 49(A) provides “a general verdict, by which the jury finds generally in favor of the prevailing party shall be used.” *See also* R.C. 2315.13.

Civ.R. 49(B) provides for a general verdict accompanied by answers to interrogatories.

Civ.R. 49(C) abolishes special verdicts.

1. VERDICT FOR PLAINTIFF. We, the jury, being duly impaneled and sworn or affirmed, find in favor of (*insert name of the plaintiff*) against (*insert name of the defendant*) in the sum of \$\_\_\_\_\_.

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

2. VERDICT FOR DEFENDANT. We, the jury, being duly impaneled and sworn or affirmed, find in favor of (*insert name of the defendant*) on the claim of (*insert name of the plaintiff*).

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

**CV 323.03 Verdict for will contest [Rev. 11/7/20]**

We, the jury, being duly impaneled and sworn or affirmed, find that the (will) (codicil) of *(insert name of testator)* dated *(insert date of contested [will] [codicil])* is

\_\_\_\_\_.\*

\* *insert "valid" or "invalid"*

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

**CV 323.05 Verdict for eminent domain [Rev. 11/7/20]****COMMENT**

Eight jurors are required in eminent domain cases. If a party so demands, twelve jurors are required in cases involving right of way. Civ.R. 38(B).

The court must use only those portions of the verdict form that apply to the particular case.

We, the jury, being duly impaneled and sworn or affirmed, find in favor of *(insert name of defendant)* and against *(insert name of plaintiff)* as follows:

(A) Compensation for property taken	\$_____
(B) Compensation for temporary easement(s)	\$_____
(C) Damages to residue, if any	\$_____
(D) Total	\$_____

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

*(Text continued on page 127)*



## Chapter CV 403

### COMPARATIVE NEGLIGENCE

- CV 403.01 Comparative negligence: one defendant (claims arising before 1/5/88) [Rev. 2/27/21]
- CV 403.01 Comparative negligence: one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.01 Contributory fault: one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.03 Comparative negligence: more than one defendant (claims arising before 1/5/88) [Rev. 2/27/21]
- CV 403.03 Comparative negligence: more than one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.03 Comparative fault: more than one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.05 Comparative negligence: one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.05 Comparative fault: one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.07 Comparative negligence: more than one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.07 Comparative fault: more than one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.09 Assumption of the risk [Rev. 10/14/17]
- CV 403.11 Rescue or attempted rescue of another
- CV 403.13 Last clear chance
- CV 403.01 Comparative negligence: one defendant (claims arising before 1/5/88) [Rev. 2/27/21]

#### COMMENT

The following instructions apply to negligence claims that do not fall within the scope of R.C. 2315.19 as amended effective 1/5/88.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding

**CV 323.03 Verdict for will contest [Rev. 11/7/20]**

We, the jury, being duly impaneled and sworn or affirmed, find that the (will) (codicil) of *(insert name of testator)* dated *(insert date of contested [will] [codicil])* is

\_\_\_\_\_.\*

\* *insert "valid" or "invalid"*

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

**CV 323.05 Verdict for eminent domain [Rev. 11/7/20]****COMMENT**

Eight jurors are required in eminent domain cases. If a party so demands, twelve jurors are required in cases involving right of way. Civ.R. 38(B).

The court must use only those portions of the verdict form that apply to the particular case.

We, the jury, being duly impaneled and sworn or affirmed, find in favor of *(insert name of defendant)* and against *(insert name of plaintiff)* as follows:

(A) Compensation for property taken	\$_____
(B) Compensation for temporary easement(s)	\$_____
(C) Damages to residue, if any	\$_____
(D) Total	\$_____

We render our verdict upon the agreement of \_\_\_\_\_ members of our jury, being three-fourths or more of our number. Those jurors agreeing to this verdict have signed their names below on this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_\_.

1. _____	5. _____
2. _____	6. _____
3. _____	7. _____
4. _____	8. _____

*(Text continued on page 127)*



## Chapter CV 403

### COMPARATIVE NEGLIGENCE

- CV 403.01 Comparative negligence: one defendant (claims arising before 1/5/88) [Rev. 2/27/21]
- CV 403.01 Comparative negligence: one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.01 Contributory fault: one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.03 Comparative negligence: more than one defendant (claims arising before 1/5/88) [Rev. 2/27/21]
- CV 403.03 Comparative negligence: more than one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.03 Comparative fault: more than one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) [Rev. 2/27/21]
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- CV 403.07 Comparative negligence: more than one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]
- CV 403.07 Comparative fault: more than one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 403.09 Assumption of the risk [Rev. 10/14/17]
- CV 403.11 Rescue or attempted rescue of another
- CV 403.13 Last clear chance
- CV 403.01 Comparative negligence: one defendant (claims arising before 1/5/88) [Rev. 2/27/21]

#### COMMENT

The following instructions apply to negligence claims that do not fall within the scope of R.C. 2315.19 as amended effective 1/5/88.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding

that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

1. GENERAL. The defendant claims that the plaintiff (was negligent) (impliedly assumed the risk of injury). (The plaintiff was negligent if he/she failed to use that care for his/her own safety which a reasonably [cautious] [careful] [prudent] person would use under the same or similar circumstances.) (The plaintiff impliedly assumed the risk of injury if he/she had knowledge of a condition that was obviously dangerous to him/her and voluntarily exposed himself/herself to that risk of injury).

#### COMMENT

The definition of implied assumption of the risk is drawn from *Anderson v. Ceccardi*, 6 Ohio St.3d 110 (1983), and *Briere v. Lathrop Co.*, 22 Ohio St.2d 166 (1970), 174–75. *See also, Cremeans v. Willmar Henderson Mfg. Co.*, 57 Ohio St.3d 145 (1991) (an employee does not voluntarily assume the risk of injury in the course of his/her employment when the risk must be encountered in the normal performance of his/her required job duties and responsibilities).

2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01

3. INTERROGATORIES.

#### COMMENT

Only the parties to the trial can be included in the interrogatories, and it is plain error to include non-parties. *Calmes v. Goodyear Tire & Rubber Co.* (1991), 61 Ohio St.3d 470, 475.

#### (A) WAS THE DEFENDANT NEGLIGENT?

CIRCLE YOUR ANSWER IN INK      YES or NO

.....	.....
.....	.....
.....	.....
.....	.....

(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B) and only those jurors who answered “yes” to (A) may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no,” sign the general verdict for the defendant and report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (A),



report this to the court.

(B) WAS THE DEFENDANT’S NEGLIGENCE A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

.....	.....
.....	.....
.....	.....
.....	.....

(1) If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to Interrogatory (C).

(2) If the answer of (six) (three-fourths) or more jurors to (B) is “no, sign the general verdict for the defendant and report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) (WAS THE PLAINTIFF NEGLIGENCE?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?)

CIRCLE YOUR ANSWER IN INK      YES or NO

.....	.....
.....	.....
.....	.....
.....	.....

(1) If the answer of (six) (three-fourths) or more jurors to (C) is “yes,” move to Interrogatory (D) and only those jurors who answered “yes” to (C) may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (C) is “no,” move to Interrogatory (E).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS THE PLAINTIFF’S (NEGLIGENCE) (ASSUMPTION OF THE RISK) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

.....	.....
.....	.....
.....	.....
.....	.....

(1) If the answer of (six) (three-fourths) or more jurors to (D) is “yes” or “no,” move to Interrogatory (E).

(2) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(3) In answering the following Interrogatory (E) about the percentages of negligence that directly and proximately caused the plaintiff’s (injury) (damages), please observe the following:

(a) only those jurors who answered “yes” to all four Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (E), and

(b) if less than (six) (three-fourths) jurors are qualified to answer (E), report this to the court.

(E) STATE THE PERCENTAGES OF (NEGLIGENCE) (ASSUMPTION OF RISK) OF THE PLAINTIFF AND NEGLIGENCE OF DEFENDANT THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF’S (INJURY) (DAMAGES).

(1) ENTER PERCENTAGES.

(a) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) ATTRIBUTABLE TO THE PLAINTIFF: \_\_\_\_\_%

(b) PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT: \_\_\_\_\_%

(c) The percentages attributable to plaintiff and defendant must equal the total of:

100%

.....

.....

.....

.....

(2) If (six) (three-fourths) jurors who are qualified cannot agree on an answer to (E), report this to the court.

(3) If the percentage attributed to the plaintiff is 50% or less,

(a) move to Interrogatory (F), and all the jurors shall participate in the deliberations, and

(b) sign the general verdict for the plaintiff.

(4) If the percentage attributable to the plaintiff is greater than 50%,

(a) do not answer Interrogatory (F),

(b) sign the general verdict for the defendant, and



(c) report to the court that you have completed your deliberations.

(F) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$\_\_\_\_\_

.....  
.....  
.....  
.....

**COMMENT**

The Committee believes that because the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

**4. GENERAL VERDICT.**

**COMMENT**

The Committee believes that two separate verdict forms should be used and explained to the jury.

(A) WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND WE FIND THAT THE TOTAL AMOUNT OF DAMAGES IS \$\_\_\_\_\_, AS DECIDED IN INTERROGATORY (F).

.....  
.....  
.....  
.....

(B) WE, THE JURY, DO HEREBY FIND FOR THE DEFENDANT.

.....  
.....  
.....  
.....

**COMMENT**

It is error to fail to have the jury return a general verdict, whether or not

interrogatories are also answered. *Calmes v. Goodyear Tire & Rubber Co.*, 61 Ohio St.3d 470 (1991).

R.C. 2315.18 requires that the general verdict determine the amount of the recovery. R.C. 2315.19(C) requires the court to diminish the total compensatory damages by the percentage of negligence attributable to the plaintiff.

**CV 403.01 Comparative negligence: one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]**

**COMMENT**

The instructions at OJI-CV 403.01 (claims arising before 1/5/88) will serve in cases with one defendant when instructions on future damages are not required for claims arising on and after 1/5/88 but before 4/09/03.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

**CV 403.01 Contributory fault: one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

**COMMENT**

S.B. 120 defined the plaintiff’s contributory conduct as “comparative fault” which applied from 4/9/03, through 4/6/05. S.B. 80, effective 4/7/05, defines the plaintiff’s contributory conduct as “contributory fault.” The substantive definitions are the same.

S.B. 120 provides that the negligence or other tortious conduct of the plaintiff or other persons who are not parties can reduce the damages available to a plaintiff who otherwise meets the burdens of proof and persuasion. R.C. 2315.33, R.C. 2315.34.

In jury trials of any negligence claim as defined in R.C. 2307.011(E) arising on and after 4/9/03, based on conduct occurring on or after that date and commenced on or after that date, in which the defendant asserts and establishes the affirmative defense of contributory negligence or the affirmative defense of implied assumption of the risk, the court must instruct the jury to return a general verdict accompanied



by answers to interrogatories. See OJI-CV 403.05 for cases in which interrogatories are required for future damages.

R.C. 2315.34 requires jurors to “return a general verdict accompanied by answers to interrogatories,” to determine the respective amounts of non-economic and economic damages, and to allocate liability among the plaintiff and defendants by percentages. R.C. 2315.35 then requires the court to “diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of negligence or other tortious conduct determined pursuant to section 2307.23 of the Revised Code that is attributable to the plaintiff.” The Committee believes that the intent is that the court, rather than the jury, will allocate the plaintiff’s recovery against a particular defendant according to whether the damages are non-economic or economic, and whether that defendant’s allocable percentage of causation exceeds 50%, pursuant to R.C. 2307.22.

## 1. GENERAL.

(A) PLAINTIFF’S CONDUCT. The defendant claims that the plaintiff (was negligent) (impliedly assumed the risk of injury) (*describe other tortious conduct*). (The plaintiff was negligent if he/she failed to use that care for his/her own safety which a reasonably [cautious] [careful] [prudent] person would use under the same or similar circumstances.) (The plaintiff impliedly assumed the risk of injury if he/she had knowledge of a condition that was obviously dangerous to him/her, and voluntarily exposed himself/herself to that risk of injury.)

(B) OTHER PERSON’S CONDUCT. The defendant claims that plaintiff’s (injury) (damages) were caused by the (negligence) (*describe tortious conduct*) of (*insert identity of other person*), who is a person from whom the plaintiff is not seeking recovery in this case.

### COMMENT

The Committee believes that the General Assembly did not intend to include express or primary assumption of the risk as “other tortious conduct” in R.C. 2315.34, and that these remain complete defenses to a claim of negligence.

The definition of implied assumption of the risk is drawn from *Anderson v. Ceccardi* (1983), 6 Ohio St.3d 110, and *Briere v. Lathrop Co.*, 22 Ohio St.2d 166 (1970). See also *Cremeans v. Willmar Henderson Mfg. Co.*, 57 Ohio St.3d 145 (1991) (an employee does not voluntarily assume the risk of injury in the course of his/her employment when the risk must be encountered in the normal performance of his/her required job duties and responsibilities).

## 2. INTRODUCTION TO INTERROGATORIES.

### COMMENT

OJI-CV 321.01.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*,

58 Ohio St.3d 226 (1991). The Committee believes that *O'Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O'Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

### 3. INTERROGATORIES.

#### COMMENT

The following interrogatories are designed for only one plaintiff. If there is more than one plaintiff, a separate set of interrogatories should be used for each plaintiff.

Only those portions of the following interrogatories that are supported by some evidence should be used.

#### (A) WAS THE DEFENDANT NEGLIGENT?

CIRCLE YOUR ANSWER IN INK	YES or NO
.....	.....
.....	.....
.....	.....
.....	.....

(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate in answering Interrogatory (B).

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no,”

(a) do not answer the remaining Interrogatories, and

(b) sign the general verdict for the defendant, and

(c) report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (A), report this to the court.

#### (B) WAS THE DEFENDANT’S NEGLIGENCE A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK	YES or NO
.....	.....



.....  
.....  
.....

(1) If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to Interrogatory (C).

(2) If the answer of (six) (three-fourths) or more jurors to (B) is “no,”

(a) do not answer the remaining Interrogatories, and

(b) sign the general verdict for the defendant, and

(c) report to the court that you have completed your deliberations

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) (WAS THE PLAINTIFF NEGLIGENT?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?) (DID THE PLAINTIFF [*describe other tortious conduct*]?)

CIRCLE YOUR ANSWER IN INK      YES or NO

.....  
.....  
.....  
.....

(1) If the answer of (six) (three-fourths) or more jurors to (C) is “yes,” move to Interrogatory (D). In answering the following Interrogatory (D) about whether the plaintiff’s conduct was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (C) are qualified to participate in answering Interrogatory (D).

(2) If the answer of (six) (three-fourths) or more jurors to (C) is “no,” move to Interrogatory (E).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS THE PLAINTIFF’S (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

.....  
.....  
.....  
.....

(1) If the answer of (six) (three-fourths) or more jurors to (D) is “yes” or “no” move to Interrogatory (E).

(2) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(E) (WAS THE [INSERT IDENTITY OF NON-PARTY] NEGLIGENCE?) (DID THE [INSERT IDENTITY OF NON-PARTY] [DESCRIBE OTHER TORTIOUS CONDUCT]?)

CIRCLE YOUR ANSWER IN INK      YES or NO

.....  
 .....  
 .....  
 .....

(1) If the answer of (six) (three-fourths) or more jurors to (E) is “yes,” move to Interrogatory (F). In answering the following Interrogatory (F) about whether the conduct of (insert identity of non-party) was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (E) are qualified to participate in answering Interrogatory (F).

(2) If the answer of (six) (three-fourths) or more jurors to (E) is “no,” move to Interrogatory (G).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (E), report this to the court.

(F) WAS THE (NEGLIGENCE) (DESCRIBE OTHER TORTIOUS CONDUCT) OF (INSERT IDENTITY OF NON-PARTY) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

.....  
 .....  
 .....  
 .....

(1) If the answer of (six) (three-fourths) or more jurors to (F) is “yes” or “no,” move to Interrogatory (G).

(2) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

(G) In answering the following Interrogatory (G) about the percentages of negligence that was a direct and proximate cause of the plaintiff’s (injury) (damages), select one of the following alternatives:

(1) PLAINTIFF, DEFENDANT, AND (INSERT IDENTITY OF NON-PARTY) ALL RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (E), and (F),



move to Interrogatory (G)(1). Only those jurors who answered “yes” to all six Interrogatories (A), (B), (C), (D), (E), and (F), are qualified to participate in answering Interrogatory (G)(1).

(2) ONLY PLAINTIFF AND DEFENDANT RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), and (D), move to Interrogatory (G)(2). Only those jurors who answered “yes” to Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (G)(2).

(3) ONLY DEFENDANT AND (*INSERT IDENTITY OF NON-PARTY*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (E), and (F), move to Interrogatory (G)(3). Only those jurors who answered “yes” to Interrogatories (A), (B), (E), and (F) are qualified to participate in answering Interrogatory (G)(3).

(4) If less than (six) (three-fourths) jurors are qualified to answer (G)(1), (G)(2), or (G)(3), report this to the court.

(G)(1) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) OF THE PLAINTIFF, NEGLIGENCE OF DEFENDANT, AND (NEGLIGENCE) (*DESCRIBE OTHER TORTIOUS CONDUCT*) OF OTHER PERSON(S) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF’S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE PLAINTIFF: \_\_\_\_\_%

(ii) PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT: \_\_\_\_\_%

(iii) PERCENTAGE OF (NEGLIGENCE) (*DESCRIBE TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE FOLLOWING PERSON(S):

(*insert identity of other person*) \_\_\_\_\_%

### COMMENT

The judge must identify every potentially liable person.

(iv) the percentages attributable to the plaintiff, the defendant, and the other person(s) must equal the total of:

100%

.....  
 .....  
 .....  
 .....

- (b) If the percentage attributed to the plaintiff is 50% or less,
  - (i) move to Interrogatory (H), and all the jurors shall participate in the deliberations, and
  - (ii) sign the general verdict for the plaintiff.
- (c) If the percentage attributable to the plaintiff is greater than 50%,
  - (i) do not answer Interrogatory (H), and
  - (ii) sign the general verdict for the defendant, and
  - (iii) report to the court that you have completed your deliberations.
- (d) If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(1), report this to the court.

(G)(2) STATE THE PERCENTAGES OF NEGLIGENCE OF DEFENDANT AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) OF THE PLAINTIFF THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT: \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE PLAINTIFF: \_\_\_\_\_%

(iii) The percentages attributable to the defendant and the plaintiff must equal the total of:

100%

.....

.....

.....

.....

- (b) If the percentage attributed to the plaintiff is 50% or less,
  - (i) move to Interrogatory (H), and all the jurors shall participate in the deliberations, and
  - (ii) sign the general verdict for the plaintiff.
- (c) If the percentage attributable to the plaintiff is greater than 50%,
  - (i) do not answer Interrogatory (H), and
  - (ii) sign the general verdict for the defendant, and



(iii) report to the court that you have completed your deliberations.

(d) If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(2), report this to the court.

(G)(3) STATE THE PERCENTAGES OF NEGLIGENCE OF DEFENDANT AND (NEGLIGENCE) (*DESCRIBE OTHER TORTIOUS CONDUCT*) OF (*INSERT IDENTIFY OF NON-PARTY*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT: \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (*DESCRIBE OTHER TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE FOLLOWING PERSON(S):

(*insert identity of other person*) \_\_\_\_\_%

COMMENT

The judge must identify every potentially liable person.

(iii) The percentages attributable to the defendant and other person(s) must equal the total of:

100%

.....  
.....  
.....  
.....

(b) move to Interrogatory (H), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

(c) If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(3) report this to the court.

(H) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$ \_\_\_\_\_

.....  
.....  
.....  
.....

**COMMENT**

The Committee believes that since the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

**(I) PLEASE STATE THE FOLLOWING:**

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF:

\$\_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS OF THE PLAINTIFF: \$\_\_\_\_\_

(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): \$\_\_\_\_\_

.....  
 .....  
 .....  
 .....

**COMMENT**

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability. R.C. 2307.22, R.C. 2307.23.

4. **COMPENSATORY DAMAGES.** "Compensatory damages" include both economic and non-economic loss.

**COMMENT**

When plaintiff's claim for future damages exceeds \$200,000, see OJI-CV 403.05.

5. **ECONOMIC LOSS.** R.C. 2307.011(C).

6. **NON-ECONOMIC LOSS.** R.C. 2307.011(F).

7. **GENERAL VERDICT.** OJI-CV 403.01 § 4 (claims arising before 1/5/88).

**CV 403.03 Comparative negligence: more than one defendant (claims arising before 1/5/88) [Rev. 2/27/21]**

**COMMENT**

See the introductory COMMENT at OJI-CV 403.01 (claims arising before 1/5/88).



The instruction at OJI-CV 403.01 § 1 (claims arising before 1/5/88) will serve in cases with multiple defendants, provided the terms referring to the defendant are pluralized. If more than two defendants are involved, the interrogatories will have to be expanded. The interrogatories are designed for only one plaintiff. If there is more than one plaintiff claiming negligence, a separate set of interrogatories should be used for each plaintiff.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

1. GENERAL. OJI-CV 403.01 § 1 (claims arising before 1/5/88).
2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01; OJI-CV 403.01 § 2 (claims arising before 1/5/88).
3. INTERROGATORIES.

#### COMMENT

See COMMENT at OJI-CV 403.01 § 3 (claims arising before 1/5/88).

(A) WAS (*insert name of defendant 1*) NEGLIGENCE?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B) and only those jurors who answered “yes” may participate.

If the answer of (six) (three-fourths) or more jurors to (A) is “no,” sign the general verdict for (*insert name of defendant 1*), and move to Interrogatory (C).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS THE NEGLIGENCE OF (*insert name of defendant 1*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to Interrogatory (C) and all jurors may participate.

If the answer of (six) (three-fourths) or more jurors to (B) is “no,” sign the general verdict for (*insert name of defendant 1*), move to Interrogatory (C) and all jurors may participate.

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) WAS (*insert name of defendant 2*) NEGLIGENCE?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (C) is “yes,” move to Interrogatory (D) and only those jurors who answered “yes” to (C) may participate.

If the answer of (six) (three-fourths) or more jurors to (C) is “no,” sign the general verdict for (*insert name of defendant 2*).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS THE NEGLIGENCE OF (*insert name of defendant 2*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (D) is “yes,” move to Interrogatory (E) and all jurors may participate.

If the answer of (six) (three-fourths) or more jurors to (D) is “no,” sign the general verdict for (*insert name of defendant 2*).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(E) (WAS THE PLAINTIFF NEGLIGENCE?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?)



CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (E) is “yes,” move to Interrogatory (F) and only those jurors who answered “yes” to (E) may participate.

If the answer of (six) (three-fourths) or more jurors to (E) is “no,” move to Interrogatory (G) and only those six or more jurors who answered “yes” to both (B) and (D) may participate.

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (E), report this to the court.

(F) WAS THE PLAINTIFF’S (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (F) is “yes,” move to Interrogatory (G) and only those jurors who answered “yes” to (F) may participate.

If the answer of (six) (three-fourths) or more jurors to (F) is “no,” move to Interrogatory (H) and all jurors may participate.

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

(G) In answering the following Interrogatory (G) about the percentages of negligence that directly and proximately caused the plaintiff’s (injury) (damages), select one of the following alternatives:

PLAINTIFF, DEFENDANT 1, AND DEFENDANT 2 ALL RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (E), and (F), move to Interrogatory (G)(1). Only those jurors who answered “yes” to all six Interrogatories (A), (B), (C), (D), (E), and (F) are qualified to participate in answering Interrogatory (G)(1).

ONLY PLAINTIFF AND DEFENDANT 1 RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (E), and (F), move to Interrogatory (G)(2). Only those jurors who answered “yes” to Interrogatories (A), (B), (E), and (F) are qualified to participate in answering Interrogatory (G)(2).



ONLY PLAINTIFF AND DEFENDANT 2 RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (C), (D), (E), and (F) move to Interrogatory (G)(3). Only those jurors who answered "yes" to Interrogatories (C), (D), (E), and (F), are qualified to participate in answering Interrogatory (G)(3).

ONLY DEFENDANT 1 AND DEFENDANT 2 RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), and (D), move to Interrogatory (G)(4). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (G)(4).

If less than (six) (three-fourths) jurors are qualified to answer (G)(1), (G)(2), (G)(3), or (G)(4), report this to the court.

(G)(1) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) OF THE PLAINTIFF, NEGLIGENCE OF DEFENDANT 1, AND NEGLIGENCE OF DEFENDANT 2 THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) ATTRIBUTABLE TO THE PLAINTIFF:	_____%
PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT 1:	_____%
PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE DEFENDANT 2:	_____%
The percentages attributable to plaintiff, ( <i>insert name of defendant 1</i> ), and ( <i>insert name of defendant 2</i> ) must equal the total of .....	100%

.....

.....

.....

.....

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (H), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (H), and sign the general verdict for the (*insert names of defendants*), and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(1), report this to the court.

(G)(2) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) OF THE PLAINTIFF THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):



PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE ( <i>insert name of defendant 1</i> ) _____%
PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) ATTRIBUTABLE TO THE PLAINTIFF: _____%
The percentages attributable to ( <i>insert name of defendant 1</i> ) and plaintiff must equal the total of ..... 100%

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (H), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (H), and sign the general verdict for (*insert name of defendant 1*), and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(2), report this to the court.

(G)(3) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 2*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) OF THE PLAINTIFF THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE ( <i>insert name of defendant 2</i> ) _____%
PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) ATTRIBUTABLE TO THE PLAINTIFF: _____%
The percentages attributable to ( <i>insert name of defendant 2</i> ) and plaintiff must equal the total of ..... 100%

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (H), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (H), and sign the general verdict for (*insert name of defendant 2*), and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(3) report this to the court.

(G)(4) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) OF (*insert name of defendant 2*) THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO ( <i>insert name of defendant 1</i> ):	_____ %
PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO ( <i>insert name of defendant 2</i> ):	_____ %
The percentages attributable to ( <i>insert names of defendants</i> ) must equal the total of ..... 100%	

_____	_____
_____	_____
_____	_____
_____	_____

move to Interrogatory (H), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G)(4), report this to the court.

(H) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$

.....	.....
.....	.....
.....	.....
.....	.....

#### 4. GENERAL VERDICT.

##### COMMENT

The Committee believes that five separate verdict forms should be used and explained to the jury.

(A) WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND AGAINST (*insert name of defendant 1*), AND WE FIND THAT THE TOTAL AMOUNT OF COMPENSATORY DAMAGES IS \$ \_\_\_\_\_, AS DECIDED IN INTERROGATORY (H).

_____	_____
-------	-------



_____	_____
_____	_____
_____	_____

(B) WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND AGAINST *(insert name of defendant 2)*, AND WE FIND THAT THE TOTAL AMOUNT OF COMPENSATORY DAMAGES IS \$ \_\_\_\_\_, AS DECIDED IN INTERROGATORY (H).

_____	_____
_____	_____
_____	_____
_____	_____

(C) WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND AGAINST *(insert name of defendant 1)* AND *(insert name of defendant 2)*, AND WE FIND THAT THE TOTAL AMOUNT OF COMPENSATORY DAMAGES IS \$ \_\_\_\_\_, AS DECIDED IN INTERROGATORY (H).

_____	_____
_____	_____
_____	_____
_____	_____

(D) WE, THE JURY, DO HEREBY FIND FOR *(insert name of defendant 1)*.

_____	_____
_____	_____
_____	_____
_____	_____

(E) WE, THE JURY, DO HEREBY FIND FOR *(insert name of defendant 2)*.

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

It is error if the jury does not return a general verdict, regardless of whether interrogatories are also answered. *Calmes v. Goodyear Tire & Rubber Co.*, 61 Ohio St.3d 470 (1991).

R.C. 2315.18 requires that the general verdict determine the amount of the recovery. R.C. 2315.19(C) requires the court to diminish the total compensatory

damages by the percentage of negligence attributable to the plaintiff.

**CV 403.03 Comparative negligence: more than one defendant, interrogatories on future damages not required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]**

**COMMENT**

In jury trials of any negligence claim as defined in R.C.2315.19(E)(2) (including any negligence aspect of medical and allied claims as defined in R.C.2305.11(D)) arising on or after 1/5/88, based on conduct occurring on or after that date, in which the defendant asserts and with sufficient evidence to submit the issue to the jury establishes the affirmative defense of contributory negligence or the affirmative defense of implied assumption of the risk, the court must instruct the jury to return a general verdict accompanied by answers to interrogatories. R.C. 2315.19(B).

The following instruction applies to claims arising on or after 1/5/88 where there is more than one defendant but Interrogatories on future damages are not required either because the plaintiff does not make a good faith claim for future damages in excess of \$200,000 or because no party makes a motion requesting interrogatories on future damages. R.C. 2323.56.

See the introductory COMMENT at OJI-CV 403.01 (claims arising before 1/5/88). The instruction at OJI-CV 403.01 § 1 (claims arising before 1/5/88) will serve in cases with multiple defendants, provided the terms referring to the defendant are pluralized. If more than two defendants are involved, the interrogatories will have to be expanded. The interrogatories are designed for only one plaintiff. If there is more than one plaintiff claiming negligence, a separate set of interrogatories should be used for each plaintiff.

1. GENERAL. OJI-CV 403.03 § 1 (claims arising before 1/5/88).
2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01; OJI-CV 403.01 § 2 (claims arising before 1/5/88).

**COMMENT**

In comparative negligence trials, three-fourths of the jury must agree as to the causal negligence of both parties, and only those jurors who so find may participate in the apportionment of negligence. *O'Connell v. Chesapeake & Ohio O. R. Co.*, 58 Ohio St.3d 226 (1991), holds it is plain error to enter judgment for the plaintiff when the interrogatories answered by the jury disclosed that two jurors who did not agree on the negligence of the sole defendant and its proximate cause of the injury had joined in the apportionment of negligence and the damages.

In the case of *Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947, however, the court held that “a juror who failed to find negligence was still able to determine proximate cause.”



## 3. INTERROGATORIES. OJI-CV 403.03 § 3 (claims arising before 1/5/88).

**COMMENT**

Interrogatories (A) through (H) and the directions to the jury applicable to those interrogatories are identical to those set forth in OJI-CV 403.03 § 3 (claims arising before 1/5/88) and the COMMENTS therein are applicable. Use those eight Interrogatories and then Interrogatory (I) as follows.

(A) OJI-CV 403.03 § 3 (A) (claims arising before 1/5/88).

(B) OJI-CV 403.03 § 3 (B) (claims arising before 1/5/88).

(C) OJI-CV 403.03 § 3 (C) (claims arising before 1/5/88).

(D) OJI-CV 403.03 § 3 (D) (claims arising before 1/5/88).

(E) OJI-CV 403.03 § 3 (E) (claims arising before 1/5/88).

(F) OJI-CV 403.03 § 3 (F) (claims arising before 1/5/88).

(G) OJI-CV 403.03 § 3 (G) (claims arising before 1/5/88).

(H) OJI-CV 403.03 § 3 (H) (claims arising before 1/5/88).

If you have attributed (some negligence) (some implied assumption of the risk) (or both) to the plaintiff but in a percentage of 50% or less and attributed a percentage of negligence greater than zero to (*insert name of defendant 1*) and a percentage of negligence greater than zero to (*insert name of defendant 2*), then answer the following Interrogatory (I).

(I) STATE THE PORTION, IF ANY, OF THE TOTAL COMPENSATORY DAMAGES IN YOUR ANSWER TO INTERROGATORY (H) THAT IS ECONOMIC LOSS TO THE PLAINTIFF AND THE PORTION, IF ANY, THAT IS NONECONOMIC LOSS TO THE PLAINTIFF:

ECONOMIC LOSS TO THE PLAINTIFF \$ \_\_\_\_\_

NONECONOMIC LOSS TO THE PLAINTIFF \$ \_\_\_\_\_

The total of these amounts must equal your answer to Interrogatory (H).

_____	_____
_____	_____
_____	_____
_____	_____

**COMMENT**

Note that R.C. 2315.19 does not change the doctrine of joint and several liability unless (1) the plaintiff was causally negligent or impliedly assumed the risk, (2) the plaintiff is still entitled to recover some damages, and (3) *both* defendants were causally negligent. R.C.2315.19(D)(1).

For instructions on “economic” and “noneconomic” loss, see OJI-CV 403.03 § 5, below.

#### 4. INTERROGATORIES: WITH VICARIOUS LIABILITY.

##### COMMENT

If there are two or more defendants and “an issue of vicarious liability \*\*\* exists relative to those parties,” then for purposes of determining the percentages of negligence and implied assumption of the risk, the jury must be instructed that those defendants shall be treated as a single party to the extent that any vicarious liability is determined to exist between them. R.C. 2315.19(B)(4). If vicarious liability is admitted or established as a matter of law, there is no factual issue for the jury to determine.

The Committee believes that because the issues relating to damages and vicarious liability are analytically different from those relating to causal negligence, the determination of damages and vicarious liability may be made by all jurors without regard to their individual votes on causal negligence.

(J) WAS (*insert name of alleged agent/employee*) AN (AGENT) (EMPLOYEE) OF (*insert name of alleged principal/employer*) AND WITHIN THE SCOPE OF HIS/HER (AGENCY) (EMPLOYMENT) AT THE TIME (*insert name of alleged agent/employee*) (ACTED) (FAILED TO ACT) (*describe conduct*).

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer to (J) is “yes,” sign the general verdict for the plaintiff and against both defendants, and report to the court that you have completed your deliberations.

If the answer to (J) is “no,” and the answer to Interrogatories (A) and (B) were “yes,” sign the general verdict for the plaintiff and against (*insert name of alleged agent/employee*), and sign the general verdict for (*insert name of alleged principal/employer*), and report to the court that you have completed your deliberations.

If six jurors cannot agree on an answer to Interrogatory (J), report this to the court.

5. ECONOMIC AND NONECONOMIC LOSS. Compensatory damages include both economic and noneconomic loss. “Economic loss” means lost wages, salaries and other compensation (earning capacity) (fringe benefits). It also means (expenditures) (expenses) (costs) for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations and all other (expenditures) (expenses) (costs) brought on by the (injury) (death) (loss to person or property). “Noneconomic loss” means harm or loss not normally measured in money, including but not limited to pain and suffering, loss of society, consortium, companionship, care, assistance,



attention, protection, advice, guidance, counsel, instruction, training, or education, mental anguish, and any other intangible loss. "Consortium" consists of (services) (sexual relations) (companionship) (comfort) (solace) (love) of a person's spouse.

**COMMENT**

Drawn from R.C. 2315.19(E)(1) and (3) in effect prior to 4/9/03.

6. VICARIOUS LIABILITY. OJI-CV 537.07.

7. GENERAL VERDICT: NO VICARIOUS LIABILITY. OJI-CV 403.03 § 4 (claims arising before 1/5/88).

8. GENERAL VERDICT: WITH VICARIOUS LIABILITY.

**COMMENT**

The Committee believes that three separate verdict forms should be used and explained to the jury.

WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND AGAINST (*insert name of alleged agent/employee*), BUT FOR (*insert name of alleged principal/employer*), AND WE DO FIND THAT THE TOTAL AMOUNT OF COMPENSATORY DAMAGES IS \$\_\_\_\_\_, AS DECIDED IN INTERROGATORY (H).

_____	_____
_____	_____
_____	_____
_____	_____

WE, THE JURY, DO HEREBY FIND FOR THE PLAINTIFF AND AGAINST (*insert name of alleged agent/employee*) and (*insert name of alleged principal/employer*), AND WE FIND THAT THE TOTAL AMOUNT OF COMPENSATORY DAMAGES IS \$\_\_\_\_\_, AS DECIDED IN INTERROGATORY (H).

_____	_____
_____	_____
_____	_____
_____	_____

WE, THE JURY, DO HEREBY FIND IN FAVOR OF (*insert name of alleged agent/employee*) AND (*insert name of alleged principal/employer*).

_____	_____
_____	_____
_____	_____
_____	_____

**COMMENT**

It is error if the jury does not return a general verdict, whether or not interrogatories are also answered. *Calmes v. Goodyear Tire & Rubber Co.*, 61 Ohio St.3d 470 (1991).

R.C. 2315.18 requires that the general verdict determine the amount of the recovery. R.C. 2315.19(C) requires the court to diminish the total compensatory damages by the percentage of negligence attributable to the plaintiff. The Committee believes that R.C. 2315.19(C) is more specific and controls, and that the judge should adjust total compensatory damages by the plaintiff's percentage.

**CV 403.03 Comparative fault: more than one defendant, interrogatories on future damages not required (claims arising on and after 4/9/03)  
[Rev. 2/27/21]**

**COMMENT**

See the introductory COMMENT at OJI-CV 403.03 (claims arising before 1/5/88) and OJI-CV 403.01 (claims arising on and after 4/9/03). The instruction at OJI-CV 403.01 § 1 (claims arising on and after 4/9/03) will serve in cases with multiple defendants, provided the terms referring to the defendant are pluralized. If more than two defendants or potentially liable persons are involved, the interrogatories will have to be expanded. The interrogatories are designed for only one plaintiff. If there is more than one plaintiff claiming negligence, a separate set of interrogatories should be used for each plaintiff.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

**1. GENERAL.**

(A) **PLAINTIFF’S CONDUCT.** The defendant(s) claim(s) that the plaintiff (was negligent) (impliedly assumed the risk of injury) (*describe other tortious conduct*). (The plaintiff was negligent if he/she failed to use that care for his/her own safety which a reasonably [cautious] [careful] [prudent] person would use under the same or similar circumstances.) (The plaintiff impliedly assumed the risk of injury if he/she had knowledge of a condition that was obviously dangerous to him/her, and voluntarily exposed himself/herself to that risk of injury.)

(B) **OTHER PERSON’S CONDUCT.** The defendant(s) claim(s) that plaintiff’s



(injury) (damages) were caused by the (negligence) (*describe tortious conduct*) of (*insert identity of other person*), who is a person from whom the plaintiff is not seeking recovery in this case.

### COMMENT

See COMMENT after OJI-CV 403.01 § 1 (claims arising on and after 4/9/03).

2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01; OJI-CV 403.01 § 2 (claims arising on and after 4/9/03).

3. INTERROGATORIES.

### COMMENT

Interrogatories (A) through (D) and the directions to the jury applicable to those interrogatories are identical to those set forth in OJI-CV 403.03 § 3 (claims arising before 1/5/88) and the COMMENTS therein are applicable. Use those four Interrogatories and then Interrogatory (E) and (F) as follows.

(A) OJI-CV 403.03 § 3 (A) (claims arising before 1/5/88).

(B) OJI-CV 403.03 § 3 (B) (claims arising before 1/5/88).

(C) OJI-CV 403.03 § 3 (C) (claims arising before 1/5/88).

(D) OJI-CV 403.03 § 3 (D) (claims arising before 1/5/88).

(E) (WAS THE PLAINTIFF NEGLIGENT?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?) (DID THE PLAINTIFF [*DESCRIBE OTHER TORTIOUS CONDUCT*]?)

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (E) is “yes,” move to Interrogatory (F) and only those jurors who answered “yes” to (E) may participate. If the answer of (six) (three-fourths) or more jurors to (E) is “no,” move to Interrogatory (G).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (E), report this to the court.

(F) WAS THE PLAINTIFF’S (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*DESCRIBE OTHER TORTIOUS CONDUCT*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (F) is “yes” or “no,” move to Interrogatory (G).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

(G) (WAS THE *[insert identity of non-party]* NEGLIGENCE?) (DID THE *[insert identity of non-party]* *[describe other tortious conduct]*?)

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (G) is “yes,” move to Interrogatory (H).

If the answer of (six) (three-fourths) or more jurors to (G) is “no,” move to Interrogatory (I).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (G), report this to the court.

In answering the following Interrogatory (H) about whether the conduct of *(insert identify of non-party)* was a direct and proximate caused of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (G) are qualified to participate in answering Interrogatory (H).

(H) WAS THE (NEGLIGENCE) *(describe other tortious conduct)* OF *(insert identity of non-party)* A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more jurors to (H) is “yes,” move to Interrogatory (I).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (H), report this to the court.

(I) In answering the following Interrogatory (I) about the percentages of negligence



that was a direct and proximate cause of the plaintiff's (injury) (damages), select one of the following alternatives:

PLAINTIFF, (*insert name of defendant 1*), (*insert name of defendant 2*), AND (*insert identity of non-party*) ALL RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H), move to Interrogatory (I)(1). Only those jurors who answered "yes" to all eight Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H) are qualified to participate in answering Interrogatory (I)(1).

PLAINTIFF, (*insert name of defendant 1*), AND (*insert name of defendant 2*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), (D), (E), and (F), move to Interrogatory (I)(2). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), (D), (E), and (F) are qualified to participate in answering Interrogatory (I)(2).

ONLY PLAINTIFF AND (*insert name of defendant 1*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (E), and (F), move to Interrogatory (I)(3). Only those jurors who answered "yes" to Interrogatories (A), (B), (E), and (F) are qualified to participate in answering Interrogatory (I)(3).

ONLY PLAINTIFF AND (*insert name of defendant 2*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (C), (D), (E), and (F), move to Interrogatory (I)(4). Only those jurors who answered "yes" to Interrogatories (C), (D), (E), and (F) are qualified to participate in answering Interrogatory (I)(4).

ONLY (*insert name of defendant 1*), (*insert name of defendant 2*), AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), (D), (G), and (H), move to Interrogatory (I)(5). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(5).

ONLY (*insert name of defendant 1*) AND (*insert name of defendant 2*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (C), and (D), move to Interrogatory (I)(6). Only those jurors who answered "yes" to Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (I)(6).

ONLY (*insert name of defendant 1*) AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors answered "yes" to Interrogatories (A), (B), (G), and (H), move to Interrogatory (I)(7). Only those jurors who answered "yes" to Interrogatories (A), (B), (G), and (H) are qualified to participate in answering Interrogatory (I)(7).

ONLY (*insert name of defendant 2*) AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF'S INJURY. If (six) (three-fourths) or more jurors



answered “yes” to Interrogatories (C), (D), (G), and (H), move to Interrogatory (I)(8). Only those jurors who answered “yes” to Interrogatories (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(8).

If less than (six) (three-fourths) jurors are qualified to answer (I)(1), (I)(2), (I)(3), (I)(4), (I)(5), (I)(6), (I)(7), or (I)(8), report this to the court.

(I)(1) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF, NEGLIGENCE OF (*insert name of defendant 1*), NEGLIGENCE OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF’S (INJURY) (DAMAGES):

PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) ( <i>describe other tortious conduct</i> ) OF THE PLAINTIFF:	_____%
PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 1</i> ):	_____%
PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 2</i> ):	_____%
PERCENTAGE OF (NEGLIGENCE) ( <i>describe other tortious conduct</i> ) OF ( <i>insert identity of non-party</i> ):	_____%

#### COMMENT

The judge must identify every potentially liable person.

The percentages attributable to the plaintiff, the defendants, and the non-party must equal the total of .....	100%
--	------

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (J), and sign the general verdicts for the defendants, and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(1) report this to the court.

(I)(2) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF, NEGLIGENCE OF (*insert name of defendant 1*), AND NEGLIGENCE OF (*insert name of defendant 2*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF’S (INJURY) (DAMAGES):



PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) ( <i>describe other tortious conduct</i> ) OF THE PLAINTIFF:	_____%
PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 1</i> ):	_____%
PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 2</i> ):	_____%

### COMMENT

The judge must identify every potentially liable person.

The percentages attributable to the plaintiff and the defendants must equal the total of .....	100%
--	------

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (J), and sign the general verdicts for the defendants, and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(2) report this to the court.

(I)(3) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 1</i> )	_____%
PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) ( <i>describe other tortious conduct</i> ) OF THE PLAINTIFF:	_____%
The percentages attributable to the plaintiff and ( <i>insert name of defendant 1</i> ) must equal the total of .....	100%

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer



Interrogatory (J), and sign the general verdict for (*insert name of defendant 1*), and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(3), report this to the court.

(I)(4) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 2*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 2</i> )	_____%
PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) ( <i>describe other tortious conduct</i> ) OF THE PLAINTIFF:	_____%
The percentages attributable to the plaintiff and ( <i>insert name of defendant 2</i> ) must equal the total of .....	100%

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributed to the plaintiff is 50% or less, move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is greater than 50%, do not answer Interrogatory (J), and sign the general verdict for (*insert name of defendant 2*), and report to the court that you have completed your deliberations.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(4), report this to the court.

(I)(5) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*), NEGLIGENCE OF (*insert name of defendant 2*), AND (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 1</i> )	_____%
PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 2</i> )	_____%
PERCENTAGE OF (NEGLIGENCE) ( <i>describe other tortious conduct</i> ) OF ( <i>insert identity of non-party</i> ):	_____%
The percentages attributable to the defendants and the non-party must equal the total of .....	100%

_____	_____
_____	_____
_____	_____
_____	_____



move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(5), report this to the court.

(I)(6) STATE THE PERCENTAGES OF NEGLIGENCE OF *(insert name of defendant 1)* AND NEGLIGENCE of *(insert name of defendant 2)* THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF <i>(insert name of defendant 1)</i> :	_____%
PERCENTAGE OF NEGLIGENCE OF <i>(insert name of defendant 2)</i> :	_____%
The percentages attributable to the defendants must equal the total of ..... 100%	

_____	_____
_____	_____
_____	_____
_____	_____

move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(6), report this to the court.

(I)(7) STATE THE PERCENTAGES OF NEGLIGENCE OF *(insert name of defendant 1)* AND (NEGLIGENCE) *(describe other tortious conduct)* of *(insert identity of non-party)* THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF <i>(insert name of defendant 1)</i> :	_____%
PERCENTAGE OF (NEGLIGENCE) <i>(describe other tortious conduct)</i> OF <i>(insert identity of non-party)</i> :	_____%
The percentages attributable to <i>(insert name of defendant 1)</i> and <i>(insert identity of non-party)</i> must equal the total of ..... 100%	

_____	_____
_____	_____
_____	_____
_____	_____

move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(7), report this to the court.

(I)(8) STATE THE PERCENTAGES OF NEGLIGENCE OF *(insert name of*

defendant 2) AND (NEGLIGENCE) (*describe other tortious conduct*) of (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE OF ( <i>insert name of defendant 2</i> ):	_____ %
PERCENTAGE OF (NEGLIGENCE) ( <i>describe other tortious conduct</i> ) OF ( <i>insert identity of non-party</i> ):	_____ %
The percentages attributable to ( <i>insert name of defendant 2</i> ) and ( <i>insert identity of non-party</i> ) must equal the total of ..... 100%	

_____	_____
_____	_____
_____	_____
_____	_____

move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (I)(8), report this to the court.

(J) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

The Committee believes that because the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

(K) PLEASE STATE THE FOLLOWING:

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF: ..... \$\_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS OF THE PLAINTIFF: .....  
\$\_\_\_\_\_



(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): ..... \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability. R.C. 2307.22, R.C. 2307.23.

4. COMPENSATORY DAMAGES. OJI-CV 403.01 § 4 (claims arising on and after 4/9/03).

### COMMENT

When plaintiff's claim for future damages exceeds \$200,000, see OJI-CV 403.05 (claims on and after 1/5/88 but before 4/9/03).

5. ECONOMIC LOSS. R.C. 2307.011(C).

6. NON-ECONOMIC LOSS. R.C. 2307.011(F).

7. GENERAL VERDICT. OJI-CV 403.03 § 4 (claims arising before 1/5/88).

**CV 403.05 Comparative negligence: one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]**

### COMMENT

In jury trials of any negligence claim as defined in R.C. 2315.19(E)(2) (including any negligence aspect of medical and allied claims as defined in R.C. 2305.11(D)) arising on or after January 5, 1988 but before April 9, 2003, based on conduct occurring on or after that date, in which the defendant asserts and with sufficient evidence to submit the issue to the jury establishes the affirmative defense of contributory negligence or the affirmative defense of implied assumption of the risk, the court must instruct the jury to return a general verdict accompanied by answers to interrogatories. R.C. 2315.19(B).

Under the version of R.C. 2323.56, effective January 5, 1988, if that negligence claim is for damages for injury to person and is thus a tort action as defined in R.C. 2323.56(A)(6), and if the plaintiff makes a good faith claim for future damages in excess of \$200,000, the court must, on motion of the plaintiff or the defendant in question, submit Interrogatories under R.C. 2323.56(B), in addition to those required by R.C. 2315.34. To the extent that the plaintiff asserts a medical or allied

claim as defined in R.C. 2305.11(D), R.C. 2323.57 applies rather than R.C. 2323.56. To the extent that the plaintiff asserts a tort action against a political subdivision under R.C. Chapter 2744, R.C. 2323.56 does not apply. R.C. 2323.56(H).

For negligence cases involving future damages, but no comparative negligence, see OJI-CV 315.09.

1. GENERAL. OJI-CV 403.01 § 1 (claims arising before 1/5/88).
2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01; OJI-CV 403.01 § 2 (claims arising before 1/5/88).
3. INTERROGATORIES. OJI-CV 403.01 § 3 (claims arising before 1/5/88).

### COMMENT

The following interrogatories address only negligence claims as defined in R.C. 2315.34 which are also tort actions as defined in R.C. 2323.56(A)(6) and which are not excepted by R.C. 2323.56(H). Interrogatories (A) through (E) are identical to those set forth at OJI-CV 403.01 § 3 (claims arising before 1/5/88), and the COMMENTS therein are applicable. Use those Interrogatories and then Interrogatories (F), (G), (H), (I), (J), and (K) as follows.

(A) OJI-CV 403.01 § 3 (A) (claims arising before 1/5/88).

(B) OJI-CV 403.01 § 3 (B) (claims arising before 1/5/88).

(C) OJI-CV 403.01 § 3 (C) (claims arising before 1/5/88).

(D) OJI-CV 403.01 § 3 (D) (claims arising before 1/5/88).

(E) OJI-CV 403.01 § 3 (E) (claims arising before 1/5/88).

(F) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES, PAST AND FUTURE, SUFFERED BY THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN INK

\$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

Move to Interrogatory (G).

If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

### COMMENT

The Committee believes that since all the issues relating to damages and the



separation into past and future damages are analytically different from those relating to causal negligence, the determination of all those issues may be made by all jurors without regard to their individual votes on causal negligence.

**(G) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (F) IS PAST DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?**

STATE YOUR ANSWER IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are past damages, move to Interrogatory (H).

If you find that there are not past damages, move to Interrogatory (I).

**(H) WHAT ARE THE PORTIONS OF THE PAST DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (G) THAT FALL INTO THE FOLLOWING:**

(1) PAST ECONOMIC LOSS ..... \$\_\_\_\_\_

(2) PAST NONECONOMIC LOSS ..... \$\_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (G).

_____	_____
_____	_____
_____	_____
_____	_____

Move to Interrogatory (I).

**(I) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (F) IS FUTURE DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?**

STATE YOUR ANSWER IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are future damages, move to Interrogatory (J).

If you find that there are no future damages, do not answer the remaining Interrogatories, complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

**(J) WHAT ARE THE PORTIONS OF THE FUTURE DAMAGES SHOWN IN**

YOUR ANSWER TO INTERROGATORY (I) THAT FALL INTO THE FOLLOWING:

(1) FUTURE ECONOMIC LOSS ..... \$\_\_\_\_\_

(2) FUTURE NONECONOMIC LOSS .....  
\$\_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (I).

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there is future economic loss, move to Interrogatory (K).

If you find that there is no future economic loss, do not answer Interrogatory (K), complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

(K) WHAT ARE THE PORTIONS, IF ANY, OF FUTURE ECONOMIC LOSS SHOWN IN YOUR ANSWER TO INTERROGATORY (J) THAT FALL INTO THE FOLLOWING:

(1) WAGES, SALARIES OR OTHER LOST COMPENSATION (EARNING CAPACITY) (FRINGE BENEFITS) ..... \$\_\_\_\_\_

(2) (EXPENDITURES) (EXPENSES) (COSTS) FOR MEDICAL CARE OR TREATMENT, REHABILITATION SERVICES, OR OTHER CARE, TREATMENT, SERVICES, PRODUCTS, OR ACCOMMODATIONS ..... \$\_\_\_\_\_

(3) ANY OTHER (EXPENDITURES) (EXPENSES) (COSTS) ..... \$\_\_\_\_\_

The total of future economic loss must equal your answer to Interrogatory (J).

TOTAL ..... \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

Drawn from R.C. 2323.56(B)(1).

4. PAST AND FUTURE DAMAGES. Damages that (result from) (are caused by) injury to the person are divided into past and future damages. Past damages are those that have accrued up to the time you reach your verdict. Future damages are those that



are reasonably certain to occur after you reach your verdict.

### COMMENT

Drawn from R.C. 2323.56(A)(2).

5. **ECONOMIC AND NONECONOMIC LOSS.** Compensatory damages include both economic and noneconomic loss. “Economic loss” means lost wages, salaries and other compensation (earning capacity) (fringe benefits). It also means (expenditures) (expenses) (costs) for medical care or treatment, rehabilitation services, or other care, treatment, services, products or accommodations and all other (expenditures) (expenses) (costs) brought on by the (injury) (death) (loss to person or property). “Noneconomic loss” means harm or loss not normally measured in money, including but not limited to pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training, or education, mental anguish, and any other intangible loss. “Consortium” consists of (services) (sexual relations) (companionship) (comfort) (solace) (love) of a person’s spouse.

### COMMENT

Drawn from R.C. 2315.19(E)(1) and (3) in effect prior to 4/9/03.

6. **FUTURE DAMAGES: COST OF ANNUITY (OPTIONAL).** OJI-CV 315.13.

7. **GENERAL VERDICT.** OJI-CV 403.01 § 4 (claims arising before 1/5/88).

**CV 403.05 Comparative fault: one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

### COMMENT

S.B. 120 provides that the negligence or other tortious conduct of the plaintiff or other persons who are not parties can reduce the damages available to a plaintiff who otherwise meets the burdens of proof and persuasion. R.C. 2315.33, 2315.34.

In jury trials of any negligence claim as defined in R.C. 2307.011(E) arising on or after April 9, 2003, based on conduct occurring on or after that date and commenced on and after that date, in which the defendant asserts and establishes the affirmative defense of contributory negligence or the affirmative defense of implied assumption of the risk, the court must instruct the jury to return a general verdict accompanied by answers to interrogatories. R.C. 2315.34.

If that negligence claim is for damages for injury to person and is thus a tort action as defined in R.C. 2323.56(A)(6), and if the plaintiff makes a good faith claim for future damages in excess of \$200,000, the court must, on motion of the plaintiff or the defendant, submit Interrogatories under R.C. 2323.56(B), in addition to those required by R.C. 2315.34. To the extent that the plaintiff asserts a medical or allied claim as defined in R.C. 2305.11(D), R.C. 2323.57 applies rather than R.C. 2323.56. To the extent that the plaintiff asserts a tort action against a political



subdivision under R.C. Chapter 2744 or a tort action against the state in the Court of Claims, R.C. 2323.56 does not apply. R.C. 2323.56(H).

R.C. 2315.34 requires jurors to “return a general verdict accompanied by answers to interrogatories,” to determine the respective amounts of non-economic and economic damages, and to allocate liability among the plaintiff and defendants by percentages. R.C. 2315.35 then requires the court to “diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of negligence or other tortious conduct determined pursuant to section 2307.23 of the Revised Code that is attributable to the plaintiff.” The Committee believes that the intent is that the court, rather than the jury, will allocate the plaintiff’s recovery against a particular defendant according to whether the damages are non-economic or economic, and whether that defendant’s allocable percentage of causation exceeds 50%, pursuant to R.C. 2307.22.

For negligence cases involving future damages, but no comparative negligence, see OJI-CV 315.09.

1. GENERAL. OJI-CV 403.01 § 1 (claims arising on and after 4/9/03).
2. INTRODUCTION TO INTERROGATORIES. OJI 321.01; OJI-CV 403.01 § 2 (claims arising on and after 4/9/03).
3. INTERROGATORIES.

#### COMMENT

The following interrogatories address only negligence claims as defined in R.C. 2315.34 which are also tort actions as defined in R.C. 2323.56(A)(6) and which are not excepted by R.C. 2323.56(H). Interrogatories (A) through (G) are identical to those set forth at OJI-CV 403.01 § 3 (claims arising on and after 4/9/03) and the COMMENTS therein are applicable. Use those seven Interrogatories and then Interrogatories (H), (I), (J), (K), (L), and (M) as follows.

(A) OJI-CV 403.01 § 3 (A) (claims arising on and after 4/9/03).

(B) OJI-CV 403.01 § 3 (B) (claims arising on and after 4/9/03).

(C) OJI-CV 403.01 § 3 (C) (claims arising on and after 4/9/03).

(D) OJI-CV 403.01 § 3 (D) (claims arising on and after 4/9/03).

(E) OJI-CV 403.01 § 3 (E) (claims arising on and after 4/9/03).

(F) OJI-CV 403.01 § 3 (F) (claims arising on and after 4/9/03).

(G) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES, PAST AND FUTURE, SUFFERED BY THE PLAINTIFF WITHOUT REGARD TO THE PLAINTIFF’S (NEGLIGENCE) (*describe other tortious conduct*)

STATE YOUR ANSWER IN INK

\$ \_\_\_\_\_



\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Move to Interrogatory (H).

If (six) (three-fourths) jurors can not agree on an answer to interrogatory (G) report this to the court.

### COMMENT

The Committee believes that since all the issues relating to damages and the separation into past and future damages are analytically different from those relating to causal negligence, the determination of all those issues may be made by all jurors without regard to their individual votes on causal negligence.

(H) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (G) IS PAST DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?

STATE YOUR ANSWER IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are past damages, move to Interrogatory (I).

If you find that there are no past damages, move to Interrogatory (J).

(I) WHAT ARE THE PORTIONS OF THE PAST DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (H) THAT FALL INTO THE FOLLOWING:

(1) PAST ECONOMIC LOSS ..... \$ \_\_\_\_\_

(2) PAST NONECONOMIC LOSS ..... \$ \_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (H).

_____	_____
_____	_____
_____	_____
_____	_____

Move to interrogatory (J).

(J) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (G) IS FUTURE DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?

STATE YOUR ANSWER IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are future damages, move to Interrogatory (K).

If you find that there are no future damages, do not answer the remaining Interrogatories, complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

(K) WHAT ARE THE PORTIONS OF THE FUTURE DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (J) THAT FALL INTO THE FOLLOWING:

(1) FUTURE ECONOMIC LOSS ..... \$\_\_\_\_\_

(2) FUTURE NONECONOMIC LOSS .....  
\$\_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (J).

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there is future economic loss move to Interrogatory (L).

If you find that there is no future economic loss do not answer Interrogatory (L) complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

(L) WHAT ARE THE PORTIONS, IF ANY, OF FUTURE ECONOMIC LOSS SHOWN IN YOUR ANSWER TO INTERROGATORY (K)(1) THAT FALL INTO THE FOLLOWING:

(1) WAGES, SALARIES OR OTHER LOST COMPENSATION (EARNING CAPACITY) (FRINGE BENEFITS) ..... \$\_\_\_\_\_

(2) (EXPENDITURES) (EXPENSES) (COSTS) FOR MEDICAL CARE OR TREATMENT, REHABILITATION SERVICES, OR OTHER CARE, TREATMENT, SERVICES, PRODUCTS, OR ACCOMMODATIONS ..... \$\_\_\_\_\_

(3) ANY OTHER (EXPENDITURES) (EXPENSES) (COSTS) ..... \$\_\_\_\_\_

The total of future economic loss must equal your answer to Interrogatory (K)(1).

TOTAL ..... \$\_\_\_\_\_

_____	_____
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**COMMENT**

Drawn from R.C. 2323.56(B)(1).

4. **PAST AND FUTURE DAMAGES.** Damages that (result from) (are caused by) injury to the person are divided into past and future damages. “Past damages” are those that have accrued up to the time you reach your verdict. “Future damages” are those that are reasonably certain to occur after you reach your verdict.

**COMMENT**

Drawn from R.C. 2323.56(A)(2).

5. **ECONOMIC LOSS.** R.C. 2307.011(C).
6. **NONECONOMIC LOSS.** R.C. 2307.011(F).
7. **FUTURE DAMAGES: COST OF ANNUITY (OPTIONAL).** OJI-CV 315.13.
8. **GENERAL VERDICT.** OJI-CV 403.01 § 7 (claims arising on and after 4/9/03).

**CV 403.07 Comparative negligence: more than one defendant, interrogatories on future damages required (claims arising on and after 1/5/88 but before 4/9/03) [Rev. 2/27/21]**

**COMMENT**

See COMMENTS to OJI-CV 403.03 (claims arising on and after 1/5/88 but before 4/9/03) and OJI-CV 403.05 (claims arising on and after 1/5/88 but before 4/9/03).

1. **GENERAL.** OJI-CV 403.03 § 1 (claims arising before 1/5/99).
2. **INTRODUCTION TO INTERROGATORIES.** OJI 321.01; OJI-CV 403.03 § 2 (claims arising before 1/5/88).
3. **INTERROGATORIES.** OJI-CV 403.03 § 3 (claims arising before 1/5/88).

**COMMENT**

Interrogatories (A) through (H) and the directions to the jury applicable to those interrogatories are identical to those set forth in OJI-CV 403.03 § 3 (claims arising before 1/5/88) and the COMMENTS therein are applicable. Use those eight Interrogatories and then Interrogatory (I) as follows.

(A) OJI-CV 403.03 § 3 (A) (claims arising before 1/5/88).

(B) OJI-CV 403.03 § 3 (B) (claims arising before 1/5/88).

(C) OJI-CV 403.03 § 3 (C) (claims arising before 1/5/88).

(D) OJI-CV 403.03 § 3 (D) (claims arising before 1/5/88).

(E) OJI-CV 403.03 § 3 (E) (claims arising before 1/5/88).

(F) OJI-CV 403.03 § 3 (F) (claims arising before 1/5/88).

(G) OJI-CV 403.03 § 3 (G) (claims arising before 1/5/88).

(H) OJI-CV 403.03 § 3 (H) (claims arising before 1/5/88).

If you have attributed (some negligence) (some implied assumption of the risk) (or both) to the plaintiff but in a percentage of 50% or less and attributed a percentage of negligence greater than zero to (*insert name of defendant 1*) and a percentage of negligence greater than zero to (*insert name of defendant 2*), then answer the following Interrogatory (I).

#### COMMENT

The Committee believes that since all the issues relating to damages and the separation into past and future damages are analytically different from those relating to causal negligence, the determination of all those issues may be made by all jurors without regard to their individual votes on causal negligence.

(I) STATE THE PORTION, IF ANY, OF THE TOTAL COMPENSATORY DAMAGES IN YOUR ANSWER TO INTERROGATORY (H) THAT IS PAST DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF:

STATE YOUR ANSWER IN INK

\$

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are past damages, move to Interrogatory (J).

If you find that there are no past damages, move to Interrogatory (K).

#### COMMENT

Note that R.C. 2315.19 does not change the doctrine of joint and several liability unless (1) the plaintiff was causally negligent or impliedly assumed the risk, (2) the plaintiff is still entitled to recover some damages, and (3) *both* defendants were causally negligent. R.C.2315.19(D)(1).

(J) WHAT ARE THE PORTIONS OF THE PAST DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (I) THAT FALL INTO THE FOLLOWING:



(1) PAST ECONOMIC LOSS ..... \$\_\_\_\_\_

(2) PAST NONECONOMIC LOSS ..... \$\_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (I).

_____	_____
_____	_____
_____	_____
_____	_____

Move to interrogatory (K).

(K) WHAT PORTION OF YOUR ANSWER TO INTERROGATORY (H) IS FUTURE DAMAGES, IF ANY, SUFFERED BY THE PLAINTIFF?

STATE YOUR ANSWER IN INK \$ \_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there are future damages, move to Interrogatory (L).

If you find that there are no future damages, do not answer the remaining Interrogatories, complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

(L) WHAT ARE THE PORTIONS OF THE FUTURE DAMAGES SHOWN IN YOUR ANSWER TO INTERROGATORY (K) THAT FALL INTO THE FOLLOWING:

(1) FUTURE ECONOMIC LOSS ..... \$\_\_\_\_\_

(2) FUTURE NONECONOMIC LOSS .....  
\$\_\_\_\_\_

The total of these two amounts must equal your answer to Interrogatory (K).

_____	_____
_____	_____
_____	_____
_____	_____

If you find that there is future economic loss move to Interrogatory (M).

If you find that there is no future economic loss do not answer Interrogatory (M) complete the verdict form for plaintiff and report to the court that you have completed your deliberations.

(M) WHAT ARE THE PORTIONS, IF ANY, OF FUTURE ECONOMIC LOSS SHOWN IN YOUR ANSWER TO INTERROGATORY (L)(1) THAT FALL INTO

## THE FOLLOWING:

(1) WAGES, SALARIES OR OTHER LOST COMPENSATION (EARNING CAPACITY) (FRINGE BENEFITS) \$\_\_\_\_\_

(2) (EXPENDITURES) (EXPENSES) (COSTS) FOR MEDICAL CARE OR TREATMENT, REHABILITATION SERVICES, OR OTHER CARE, TREATMENT, SERVICES, PRODUCTS, OR ACCOMMODATIONS  
\$\_\_\_\_\_

(3) ANY OTHER (EXPENDITURES) (EXPENSES) (COSTS) \$\_\_\_\_\_

The total of future economic loss must equal your answer to Interrogatory (L)(1).

TOTAL \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

## COMMENT

Drawn from R.C. 2323.56(B)(1).

4. PAST AND FUTURE DAMAGES. OJI-CV 403.05 § 4 (claims arising on and after 1/5/88 but before 4/9/03).
5. ECONOMIC AND NONECONOMIC LOSS. OJI-CV 403.05 § 5 (claims arising on and after 1/5/88 but before 4/9/03).
6. FUTURE DAMAGES: COST OF ANNUITY (OPTIONAL). OJI-CV 315.13.
7. INTERROGATORIES; WITH VICARIOUS LIABILITY. OJI-CV 403.03 § 4 (claims arising on and after 1/5/88 but before 4/9/03).
8. VICARIOUS LIABILITY. OJI-CV 537.07.
9. GENERAL VERDICT: NO VICARIOUS LIABILITY. OJI-CV 403.03 § 4 (claims arising before 1/5/88).
10. GENERAL VERDICT: WITH VICARIOUS LIABILITY. OJI-CV 403.03 § 8 (claims arising on and after 1/5/88 but before 4/9/03).

**CV 403.07 Comparative fault: more than one defendant, interrogatories on future damages required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

## COMMENT

See comments to OJI-CV 403.03 (claims arising on and after 1/5/88 but before 4/9/03) and OJI-CV 403.05 (claims arising on and after 4/9/03).



1. GENERAL. OJI-CV 403.03 § 1 (claims arising on and after 4/9/03).
2. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01; OJI-CV 403.03 § 2 (claims arising on and after 4/9/03).
3. INTERROGATORIES. OJI-CV 403.03 § 3 (claims arising on and after 4/9/03).
  - (A) OJI-CV 403.03 § 3 (A) (claims arising on and after 4/9/03).
  - (B) OJI-CV 403.03 § 3 (B) (claims arising on and after 4/9/03).
  - (C) OJI-CV 403.03 § 3 (C) (claims arising on and after 4/9/03).
  - (D) OJI-CV 403.03 § 3 (D) (claims arising on and after 4/9/03).
  - (E) OJI-CV 403.03 § 3 (E) (claims arising on and after 4/9/03).
  - (F) OJI-CV 403.03 § 3 (F) (claims arising on and after 4/9/03).
  - (G) OJI-CV 403.03 § 3 (G) (claims arising on and after 4/9/03).
  - (H) OJI-CV 403.03 § 3 (H) (claims arising on and after 4/9/03).
  - (I) OJI-CV 403.03 § 3 (I) (claims arising on and after 4/9/03).
  - (J) OJI-CV 403.03 § 3 (J) (claims arising on and after 4/9/03).
  - (K) OJI-CV 403.03 § 3 (K) (claims arising on and after 4/9/03).
  - (L) OJI-CV 403.05 § 3 (G) (claims arising on and after 4/9/03).
  - (M) OJI-CV 403.05 § 3 (H) (claims arising on and after 4/9/03).
  - (N) OJI-CV 403.05 § 3 (I) (claims arising on and after 4/9/03).
  - (O) OJI-CV 403.05 § 3 (J) (claims arising on and after 4/9/03).
  - (P) OJI-CV 403.05 § 3 (K) (claims arising on and after 4/9/03).
  - (Q) OJI-CV 403.05 § 3 (L) (claims arising on and after 4/9/03).
4. PAST AND FUTURE DAMAGES. OJI-CV 403.05 § 4 (claims arising on and after 4/9/03).
5. ECONOMIC LOSS. R.C. 2307.011(C).
6. NONECONOMIC LOSS. R.C. 2307.011(F).
7. FUTURE DAMAGES: COST OF ANNUITY (OPTIONAL). OJI-CV 315.13.
8. GENERAL VERDICT. OJI-CV 403.03 § 3 (claims arising before 1/5/88).

**CV 403.09 Assumption of the risk [Rev. 10/14/17]**

**COMMENT**

The instructions at OJI-CV 403.09 cover the affirmative defenses of express, implied, and primary assumption of risk. Contributory fault includes express or implied assumption of the risk. Contributory fault is not a bar to damages. R.C. 2307.011(B), R.C. 2315.33.

1. **EXPRESS ASSUMPTION OF THE RISK.** The defendant claims that the plaintiff expressly assumed the risk of injury. The plaintiff expressly assumed the risk if he/she expressly agreed or contracted with the defendant not to sue for any future injuries that might be caused by the defendant's negligence.

**COMMENT**

The definition of express assumption of the risk is taken from *Anderson v. Ceccardi*, 6 Ohio St.3d 110 (1983). For the effect of express assumption of the risk on a product liability claim as defined in R.C. 2307.71(M), see R.C. 2315.20.

Agreements whereby a plaintiff assumes the risk of personal injury are scrutinized by the courts to ensure that (1) they are entered into knowingly and voluntarily, *Nickell v. Atomic Speedway* 4th Dist. Ross No. 991 (July 5, 1983), Restatement of the Law 2d, Torts Section 496B, Comment c (1965); (2) the alleged tortious conduct of the defendant falls within the terms of the agreement, *Cain v. Cleveland Parachute Training Center*, 9 Ohio App.3d 27 (1983), Restatement of the Law 2d, Torts Section 496B, Comment d (1965); and (3) the agreement is not void as against public policy, *Cleveland, P. & A. R. Co. v. Curran*, 19 Ohio St. 1 (1869), Restatement of the Law 2d, Torts Section 567, and Section 496B, Comments e through j (1965).

2. **IMPLIED ASSUMPTION OF THE RISK.** The defendant claims that the plaintiff impliedly assumed the risk of injury. The plaintiff impliedly assumed the risk of injury if he/she had knowledge of a condition that was obviously dangerous to him/her and voluntarily exposed himself/herself to that risk of injury.

**COMMENT**

The definition of implied assumption of the risk is drawn from *Anderson v. Ceccardi*, 6 Ohio St.3d 110 (1983), and *Briere v. Lathrop Co.*, 22 Ohio St.2d 166 (1970). See also *Cremeans v. Willmar Henderson Mfg. Co.*, 57 Ohio St.3d 145 (1991) (an employee does not voluntarily assume the risk of injury in the course of his employment when that risk must be encountered in the normal performance of his/her required job duties and responsibilities).

3. **PRIMARY ASSUMPTION OF THE RISK (SPORTS INJURIES).**

**COMMENT**

Primary assumption of the risk bars recovery by plaintiff for injuries sustained during a sporting event when the plaintiff is a willing participant or spectator.

**[Next Page is 195]**



# Chapter CV 417

## MEDICAL NEGLIGENCE

- CV 417.01 Introduction [Rev. 3/17/18]
- CV 417.03 Standards of care: physician/surgeon [Rev. 5/7/16]
- CV 417.05 Res ipsa loquitor [Rev. 5/7/16]
- CV 417.07 Common law lack of informed consent: physician/surgeon [Rev. 5/7/16]
- CV 417.09 Statutory defense, lack of informed consent: physician/surgeon R.C. 2317.54 [Rev. 5/7/16]
- CV 417.11 Employees and agents: physician/surgeon [Rev. 5/7/16]
- CV 417.13 Affirmative defense: patient negligence [Rev. 5/7/16]
- CV 417.15 Hospitals [Rev. 5/7/16]
- CV 417.17 Loss of less-than-even chance of survival/recovery [Rev. 2/27/21]
- CV 417.19 Interrogatories (claims arising on and after 4/11/03) [Rev. 2/27/21]
- CV 417.21 Verdict forms [Rev. 5/7/16]
- CV 417.01 Introduction [Rev. 3/17/18]

### COMMENT

These instructions may be modified for other health care providers including, but not limited to, dentists, chiropractic physicians, podiatric physicians, mental health professionals, nurses, specialized technicians, or operating room assistants. When appropriate, these instructions should be accompanied by an instruction on agency, hospital liability, or residential facility liability. *See* R.C. 2305.113.

R.C. 2305.234 provides immunity to certain health care providers under specified conditions. The Committee believes that immunity issues generally must be resolved by the trial judge. Rarely, an instruction may be necessary to resolve a disputed fact question.

Expert testimony unique to medical claims is addressed in R.C. 2743.43 and Evid.R. 601.

R. C. 2317.43(A), Ohio's apology statute, prohibits the admission in evidence, as an admission of liability or as evidence of an admission against interest, of a "statement . . . expressing apology" that expresses a feeling of regret for an unanticipated outcome of a patient's medical care even if it includes an acknowledgement that the patient's medical care fell below the applicable/required standard of care. *Stewart v. Vivian*, 151 Ohio St.3d 574, 2017-Ohio-7526. Application of the statute is a question of law for the court.

1. GENERAL. The plaintiff claims that the defendant (physician) (surgeon) negligently caused (injury) (damage) to the plaintiff.
2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that the defendant was negligent and that the defendant's negligence was a proximate cause of (injury) (damage) to the plaintiff.

**CV 417.03 Standards of care: physician/surgeon [Rev. 5/7/16]**

1. NONSPECIALIST. The existence of a (physician-patient) (surgeon-patient) relationship places on the (physician) (surgeon) the duty to act as a (physician) (surgeon) of reasonable skill, care, and diligence under like or similar conditions or circumstances. This is known as the standard of care. The standard of care is to do those things that a reasonably careful (physician) (surgeon) would do and to refrain from doing those things that a reasonably careful (physician) (surgeon) would not do. The required standard of care is the same throughout the United States. If you find by the greater weight of the evidence that the defendant failed to meet this standard of care, then you must find that he/she was negligent.

**COMMENT**

The standard of care is not limited by geographical considerations. *Berdyck v. Shinde*, 66 Ohio St.3d 573, 1993-Ohio-183; *Bruni v. Tatsumi*, 46 Ohio St.2d 127 (1976).

An instruction using "honest error or mistake in judgment" is not proper. A doctor can be exercising his/her best clinical judgment and still be negligent. *Kurzner v. Sanders*, 89 Ohio App.3d 674 (1st Dist.1993).

2. SPECIALIST. A specialist is a (physician) (surgeon) who holds himself/herself out as specially trained, skilled, and qualified in a particular branch of (medicine) (surgery). The defendant (physician) (surgeon) holds himself/herself out as a specialist in (*insert name of specialty*). The standard of care for a (physician) (surgeon) in the practice of a specialty is that of a reasonable specialist practicing (medicine) (surgery) exercising reasonable skill, care, and diligence under like and similar circumstances, regardless of where he/she practices. A specialist in any branch has the same standard of care as all other specialists in that branch. If you find by the greater weight of the evidence that the defendant failed to meet this standard of care, then you must find that he/she was negligent.

(Text continued on page 279)



negligence was a proximate cause of the plaintiff's (injury) (damage).

3. **DUTY OF CARE.** A hospital is negligent if it fails to exercise the same degree of care, skill, and diligence that a reasonably careful hospital offers under the same or similar circumstances, considering the level of services or skills offered by the hospital and what the hospital knew or should have known about the patient's physical condition, mental capacity and ability to care for himself/herself.

#### COMMENT

Although expert testimony is normally required to establish the standard of care, it may not be necessary when the average juror would be able to decide about negligence from his own experience. *Jones v. Hawkes Hosp.*, 175 Ohio St. 503 (1964). See *Ramage v. Central Ohio Emergency Serv., Inc.*, 64 Ohio St.3d 97, 1992-Ohio-109, for an extensive discussion.

4. **PHYSICIAN'S INSTRUCTIONS (ADDITIONAL).** Medical and surgical services are ordinarily left to the exclusive discretion of the physician in charge of the patient, and the hospital is generally not responsible for injuries caused to the patient if its employees follow the physician's instructions. You may find that the hospital was negligent if you find by the greater weight of the evidence that its employees failed to follow the physician's instructions, given orally or in writing, or that in carrying them out, the employees were negligent, or that the employees carried out instructions that were so (wrong) (improper) that a reasonably careful person with the (training) (experience) of the employees would (ask about their correctness) (refuse to follow them) in the exercise of ordinary care.

#### COMMENT

This instruction applies only to circumstances where the physician in charge is an independent contractor and not a hospital employee.

5. **AGENCY BY ESTOPPEL (ADDITIONAL).** A hospital is generally not responsible for the acts of (*describe independent medical practitioners*) who are not employees of the hospital. The employees of a hospital include only those persons whose performance the hospital has the right to control and direct. However, a hospital is responsible for the acts of a (*describe independent medical practitioners*) when the hospital holds itself out to the public as a provider of medical services and a reasonable patient, without notice or knowledge to the contrary, looks to the hospital, as opposed to the (*describe independent medical practitioners*), to provide competent medical care.

#### COMMENT

Drawn from *Clark v. Southview Hosp. & Family Health Center*, 68 Ohio St.3d 435, 1994-Ohio-519, syllabus.

6. **LOANED SERVANT.** If a hospital surrenders and the physician accepts the right



to control and direct an employee of the hospital, then the physician and not the hospital is responsible for the employee's conduct.

#### COMMENT

If evidence is introduced of agency by estoppel, this instruction must be modified. See OJI-CV 417.15 § 5 and *Clark v. Southview Hosp. & Family Health Center*, 68 Ohio St.3d 435, 1994-Ohio-519, syllabus.

#### CV 417.17 Loss of less-than-even chance of survival/recovery [Rev. 2/27/21]

1. GENERAL. The plaintiff claims that (he/she lost a less-than even chance of recovery) ([insert name of decedent] lost a less-than-even chance of surviving) from his/her pre-existing (condition) (disease) as a result of the defendant's medical negligence. The law recognizes that even though (the plaintiff's loss of chance of recovery) ([insert name of decedent's] loss of chance of survival) from his/her preexisting (condition) (disease) was less than fifty percent, the plaintiff is entitled to compensation for the loss of any portion of that chance of (recovery) (survival) from the preexisting (condition) (disease) proximately caused by the defendant's medical negligence.

#### COMMENT

*Roberts v. Ohio Permanente Medical Group, Inc.*, 76 Ohio St.3d 483, 1996-Ohio-375, overruling *Cooper v. Sisters of Charity of Cincinnati, Inc.*, 27 Ohio St.2d 242 (1971). The loss-of-chance theory is now recognized. An example of how to apply the formula is provided in *Roberts* at 489. The Committee believes that instructions on wrongful death damages may be used as a guideline to calculate the "total amount of damages." For a discussion of calculating "total amount of damages," see Annotation, *Medical Malpractice: Measure and Elements of Damages in Actions Based on Loss of Chance*, 81 A.L.R. 4th 485 (2003); and Aagaard, *Identifying and Valuing the injury In Lost Chance Cases*, 96 Mich. L.Rev. 1335 (1998).

*McMullen v. Ohio State Univ. Hosps.*, 88 Ohio St.3d 332, 2000-Ohio-342, limits the applicability of *Roberts*. This instruction should not be given when the defendant's negligence caused the ultimate harm unless the plaintiff is also offering loss of chance as an alternative theory for recovery. If the chance of recovery or survival was 50% or more, the loss of chance theory does not apply.

2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that

(A) the defendant committed negligence; and

(B) the defendant's negligence proximately caused a decrease in (the plaintiff's loss of a less than even chance of recovery) ([insert name of decedent's] loss of less than even chance of survival) from his/her preexisting (condition) (disease).



## COMMENT

Drawn from *Roberts v. Ohio Permanente Med. Group, Inc.*, 76 Ohio St.3d 483, 1996-Ohio-375; *Geesaman v. St. Rita's Medical Center*, 183 Ohio App.3d 555, 2009-Ohio-3931 (applying the theory of loss of chance of survival to a case involving recovery instead of survival).

*McMullen v. Ohio State Univ. Hosp.*, 88 Ohio St.3d 332, 2000-Ohio-342, limits the applicability of *Roberts*. This instruction should not be given when the defendant's negligence caused the ultimate harm unless the plaintiff is also offering loss of chance as an alternative theory for recovery. If the chance of recovery or survival was 50% or more, the loss of chance theory does not apply.

3. MEDICAL NEGLIGENCE. OJI-CV 417.01.
4. AFFIRMATIVE DEFENSE. OJI-CV 417.11.
5. CONCLUSION. OJI-CV Chapter 313.
6. CONCLUSION WITH AFFIRMATIVE DEFENSE. OJI-CV Chapter 313.
7. PROXIMATE CAUSE. OJI-CV 405.01.
8. DAMAGES. If you find by the greater weight of the evidence that the defendant was medically negligent and that his/her negligence caused (the plaintiff's loss of chance of recovery) ([insert name of decedent]'s loss of chance of survival), then you must decide how much that chance of (recovery) (survival) was (decreased) (lessened). You must decide the percentage of lost chance of (recovery) (survival) that was proximately caused by the defendant's negligence based on all the evidence presented. To decide the amount of damages as a result of the loss of chance of (recovery) (survival), you must

(A) consider the expert testimony presented and decide the total amount of damages from the date of the defendant's negligence, including, but not limited to, the loss of earnings and the loss of consortium; and

(B) decide the percentage of (the plaintiff's loss of chance of recovery) ([insert name of decedent]'s loss of chance of survival) from his/her preexisting (condition) (disease) proximately caused by the defendant's negligence; and

(C) multiply that percentage by the total amount of damages in order to arrive at fair and just compensation.

For example:

\$\_\_\_\_\_ (insert total damages) x \_\_\_\_\_ % (insert percentage of lost chance of recovery or survival) = \$\_\_\_\_\_ (insert resulting damages).

## COMMENT

Drawn from *Roberts v. Ohio Permanente Med. Group, Inc.*, 76 Ohio St.3d 483, 1996-Ohio-375.

## 9. INTRODUCTION TO INTERROGATORIES.

## COMMENT

OJI-CV 321.01.

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

## 10. INTERROGATORIES: LOSS OF CHANCE OF RECOVERY/SURVIVAL.

## (A) WAS THE DEFENDANT NEGLIGENT?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B) and only those jurors answering “yes” may participate in answering Interrogatory (B).

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no,” do not answer the remaining interrogatories, complete and sign the general verdict for the defendant and report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS THE DEFENDANT’S NEGLIGENCE A PROXIMATE CAUSE OF A LOSS OF A LESS THAN EVEN CHANCE OF (RECOVERY) (SURVIVAL) FROM (THE PLAINTIFF’S) (*INSERT NAME OF DECEDENT*)’S PRE-EXISTING (CONDITION) (DISEASE).

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to



Interrogatory (C) and only those jurors answering "yes" may participate in answering Interrogatory (C).

(2) If the answer of (six) (three-fourths) or more jurors to (B) is "no," do not answer the remaining interrogatories, complete and sign the general verdict for the defendant, and report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) WHAT CHANCE OF (RECOVERY) (SURVIVAL) FROM THE PRE-EXISTING CONDITION DID (THE PLAINTIFF) (*INSERT NAME OF DECEDENT*) HAVE PRIOR TO THE DEFENDANT'S NEGLIGENT ACT(S)?

\_\_\_\_\_ % (*Insert percentage*) (This percentage must be less than 50%.)

_____	_____
_____	_____
_____	_____
_____	_____

(D) WHAT PERCENTAGE OF CHANCE OF (RECOVERY) (SURVIVAL) FROM THE PRE-EXISTING CONDITION REMAINED AFTER THE DEFENDANT'S NEGLIGENCE?

\_\_\_\_\_ % (*Insert percentage*) (This percentage must be equal to or less than the chance of (recovery) (survival) of (the plaintiff) (*insert name of decedent*) prior to the defendant's negligent act(s), which is your answer to Interrogatory (C).)

_____	_____
_____	_____
_____	_____
_____	_____

### COMMENT

After the jury determines the percentage of lost chance of (recovery) (survival), the jury must be instructed to determine the total amount of damages before completing the general verdict form for the plaintiff. All jurors may participate in the calculation of the total damages.

(E) DAMAGES. (*Insert all relevant Interrogatories regarding damages at CV 417.19*).

(F) VERDICT FOR PLAINTIFF. We, the jury, being duly impaneled and sworn, find in favor of the plaintiff and do further find that the total damages owing to be \$\_\_\_\_\_ (*insert figure from calculation of total damages from Interrogatory E*) multiplied by \_\_\_\_\_ % (*Interrogatory C percentage minus Interrogatory D percentage*), which equals \$\_\_\_\_\_, and we do so render our verdict upon the concurrence of \_\_\_\_\_ members of our jury, that being (six) (three-fourths)

or more of our number. Each juror concurring in this verdict signs his/her name this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

_____	_____
_____	_____
_____	_____
_____	_____

(F) VERDICT FOR DEFENDANT. We, the jury, being duly impaneled and sworn, find in favor of the defendant, \_\_\_\_\_, and we do so render our verdict upon the concurrence of \_\_\_\_\_, members of our jury, that being (six) (three-fourths) or more of our number. Each juror concurring in this verdict signs his/her name this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

_____	_____
_____	_____
_____	_____
_____	_____

### CV 417.19 Interrogatories (claims arising on and after 4/11/03) [Rev. 2/27/21]

#### COMMENT

R.C. 2323.43 provides for limits on compensatory damages representing non-economic loss in medical, dental, optometric, or chiropractic claims and specifies that the trial judge, not the jury, applies the limits to the fact finder's determination of total compensatory damages for noneconomic loss [R.C. 2323.43(A)(2) and (3)]; and states that the jury shall not be informed of the limit [R.C. 2323.43(D)(2)]. R.C. 2323.43(G)(1), (2) and (3) excludes such claims in specified cases.

The following interrogatories are required in all medical negligence cases. For interrogatories involving contributory negligence/fault, see OJI-CV Chapter 403, Comparative Negligence.

1. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01.
2. INTERROGATORIES.

(A) NEGLIGENCE. WAS THE DEFENDANT NEGLIGENT?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more of the jurors to (A) is "yes," move to Interrogatory (B) and only those jurors answering "yes" may participate in answering Interrogatory (B).



If the answer of (six) (three-fourths) or more of the jurors to (A) is "no," do not answer the remaining interrogatories, complete and sign the general verdict for the defendant, and report to the court that you have completed your deliberations.

If (six) (three-fourths) of the jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS THE DEFENDANT'S NEGLIGENCE A PROXIMATE CAUSE OF ANY (INJURY) (DAMAGE) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of (six) (three-fourths) or more of the jurors to (B) is "yes," move to Interrogatory (C) and all jurors may participate in answering the remaining interrogatories.

If the answer of (six) (three-fourths) or more of the jurors to (B) is "no," do not answer the remaining interrogatories, complete and sign the general verdict for the defendant, and report to the court that you have completed your deliberations.

If (six) (three-fourths) of the jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) DID THE PLAINTIFF'S INJURIES INCLUDE EITHER OF THE FOLLOWING:

(1) PERMANENT AND SUBSTANTIAL PHYSICAL DEFORMITY, LOSS OF USE OF A LIMB, OR LOSS OF A BODILY ORGAN SYSTEM?

(2) PERMANENT PHYSICAL FUNCTIONAL INJURY THAT PERMANENTLY PREVENTS THE INJURED PERSON FROM BEING ABLE TO INDEPENDENTLY CARE FOR SELF AND PERFORM LIFE SUSTAINING ACTIVITIES?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If (six) (three-fourths) of jurors cannot agree on the answer to Interrogatory (C)(1) or (2), do not answer Interrogatory (C) and move to Interrogatory (D).

#### COMMENT

Interrogatory C should be used only when the evidence supports one or both of the findings at this Interrogatory (C)(1) or (2). R.C. 2323.43(A)(3).

(D) DAMAGES: ECONOMIC LOSS. WHAT PORTION OF THE COMPENSATORY DAMAGES, IF ANY, REPRESENTS PAST AND FUTURE ECONOMIC LOSS TO THE PLAINTIFF?

(1) ECONOMIC LOSS. “Economic loss” means any of the following:

- (a) all wages, salaries or other compensation lost as a result of the plaintiff’s claim; or
- (b) all expenditures for medical care or treatment, rehabilitation services, or other care, treatment, services, products, or accommodations as a result of the plaintiff’s claim; or
- (c) any other expenditures incurred as a result of the plaintiff’s claim.

(i) PAST DAMAGES. “Past damages” means any damages that have accrued as a result of the plaintiff’s claim up to the time that you reach your verdict.

(ii) FUTURE DAMAGES. “Future damages” means any damages that are reasonably certain to occur as a result of the plaintiff’s claim after you reach your verdict.

PAST ECONOMIC DAMAGES	(A) \$_____
FUTURE ECONOMIC DAMAGES	(B) \$_____
TOTAL ECONOMIC DAMAGES	(A+B) \$_____

_____	_____
_____	_____
_____	_____
_____	_____

If (six) (three-fourths) or more of the jurors cannot agree on the answer to Interrogatory (D), report this to the court.

Move to Interrogatory (E) and all jurors may participate.

(E) DAMAGES: NONECONOMIC LOSS. WHAT PORTION OF THE COMPENSATORY DAMAGES, IF ANY, REPRESENTS PAST AND FUTURE NONECONOMIC LOSS TO THE PLAINTIFF?

(1) NONECONOMIC LOSS. “Noneconomic loss” means pain and suffering, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training or education, disfigurement, mental anguish, and any other intangible loss experienced as a result of the plaintiff’s claim.

(a) PAST DAMAGES. “Past damages” means any damages that have accrued as a result of the plaintiff’s claim up to the time that you reach your verdict.



(b) FUTURE DAMAGES. "Future damages" means any damages that are reasonably certain to occur as a result of the plaintiff's claim after you reach your verdict.

PAST NONECONOMIC DAMAGES (A) \$\_\_\_\_\_

FUTURE NONECONOMIC DAMAGES (B) \$\_\_\_\_\_

TOTAL NONECONOMIC DAMAGES (A+B) \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

If (six) (three-fourths) or more of the jurors cannot agree on the answer to Interrogatory (E), report this to the court.

Move to Interrogatory (F).

(F) DAMAGES: TOTAL COMPENSATORY DAMAGES. STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF.

\$\_\_\_\_\_\*

\*To determine this amount, add the total amount of damages for economic loss from Interrogatory (D) to the total amount of damages for noneconomic loss from Interrogatory (E), then enter the total amount on the Verdict for Plaintiff.

_____	_____
_____	_____
_____	_____
_____	_____

(Text continued on page 295)





# Chapter CV 421

## OTHER PROFESSIONAL NEGLIGENCE

**CV 421.01** Introduction [Rev. 3/5/16]

**CV 421.03** Standard of Care [Rev. 3/5/16]

**CV 421.05** Affirmative defense: client negligence [Rev. 3/5/16]

**CV 421.07** Interrogatories (claims arising on and after 4/9/03) [Rev. 2/27/21]

**CV 421.01** Introduction [Rev. 3/5/16]

1. GENERAL. The plaintiff claims that the defendant (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) negligently caused (injury) (damage) to the plaintiff.

2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that the defendant was negligent and that the defendant's negligence was a proximate cause of (injury) (damage) to the plaintiff.

**CV 421.03** Standard of Care [Rev. 3/5/16]

1. INTRODUCTION. This is a negligence claim brought by the plaintiff against the defendant (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) to recover compensation for damages claimed to have been caused by the defendant's negligence. The plaintiff must prove by the greater weight of the evidence that the defendant was negligent and that the defendant's negligence was a proximate cause of (injury) (damage) to the plaintiff. A(n) (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) is negligent if he/she fails to meet the required standard of care.

2. STANDARD OF CARE. The existence of a(n) (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*)-client relationship places on the (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) the duty to act with the degree of skill, knowledge, care, and diligence normally applied by members of that profession under like or similar circumstances. This is known as the standard of care. If you find by the greater weight of the evidence that the defendant failed to meet this standard of care, then you shall find that he/she was negligent.

### COMMENT

Drawn from *Richard v. Staehle*, 70 Ohio App.2d 93 (1980); *Strock v. Pressnell*, 38 Ohio St. 3d 207 (1988); Restatement of the Law 2d, Torts (1965), Section 299A.

Unlike medical negligence, there is no authority to support a different standard of care based on specialty.

A law firm does not engage in the practice of law and may not be held vicariously



liable unless one of its principals or member lawyers has committed legal negligence (malpractice). *Nat'l Union Fire Ins. Co. v. Wuerth*, 122 Ohio St.3d 594, 2009-Ohio-3601.

3. **DIFFERENT METHODS (OPTIONAL).** Although some other (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) might have used a method of (*describe professional activity*) different from that used by the defendant, this circumstance does not by itself prove that the defendant was negligent. You shall decide whether the method used by the defendant was in accordance with the required standard of care.

#### COMMENT

Drawn from *Pesek v. University Neurologists Assoc.*, 87 Ohio St.3d 495, 2000-Ohio-483. A “different methods” instruction should only be given if there is evidence that more than one method is acceptable for a particular situation.

4. **CUSTOMARY METHODS (OPTIONAL).** The customary or routine method of (*describe professional activity*) may be considered by you along with all of the other facts and circumstances in evidence. Although a particular method may be customary, usual, or routine, this circumstance does not by itself prove that method to be within the standard of care. You shall decide by the greater weight of the evidence whether the method of (*describe professional activity*) used by the defendant was in accordance with the required standard of care.

#### COMMENT

Drawn from *Ault v. Hall* (1928), 119 Ohio St. 422.

5. **BAD RESULT.** The fact that the (work) (advice) of the (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) did not fulfill the plaintiff's expectations does not by itself prove that the (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*) was negligent.

6. **PLAINTIFF'S PRIOR CIRCUMSTANCES/CONDITION (OPTIONAL).** You have heard evidence that the plaintiff may have (caused) (contributed to) the (circumstances) (condition) for which the plaintiff sought the defendant's services by (*describe plaintiff's actions in causing his/her circumstances or condition*). The fact that the plaintiff may have (caused) (contributed to) the (circumstances) (condition) for which he/she sought the defendant's services before coming to the defendant is not relevant and should not be considered by you. You must consider only whether the defendant failed to meet the required standard of care and whether that failure, if any, was a proximate cause of any (injury) (damage) to the plaintiff.

#### COMMENT

Drawn from *Lambert v. Shearer*, 84 Ohio App.3d 266 (1992).



7. PROXIMATE CAUSE. OJI-CV Chapter 405.
8. FORESEEABILITY (ADDITIONAL).

#### COMMENT

In a medical negligence case, a special foreseeability instruction (OJI-CV 417.03 § 8) is required. *See Cromer v. Children's Hosp. Med. Ctr. of Akron*, 142 Ohio St.3d 257, 2015-Ohio-229. The Committee believes that the reasoning of *Cromer* may also apply to other professional negligence cases.

9. AFFIRMATIVE DEFENSE: CLIENT NEGLIGENCE. OJI-CV 421.03.
10. CONCLUSION. OJI-CV Chapter 313.
11. PROXIMATE CAUSE. OJI-CV Chapter 405.
12. DAMAGES. OJI-CV Chapter 315.

#### **CV 421.05 Affirmative defense: client negligence [Rev. 3/5/16]**

1. GENERAL. OJI-CV 303.03 § 4.
2. CLIENT NEGLIGENCE. The defendant claims that the plaintiff was negligent by failing to exercise reasonable care for his/her own (safety) (well-being) (welfare) (*describe other economic interest*) and that such failure was a proximate cause of the plaintiff's (injury) (damage). A client should accept and obey all reasonable (advice) (caution) (instruction) given to him/her after he/she has engaged the services of the (attorney) (accountant) (architect) (designer) (engineer) (*describe other professional*). A failure to do so may be a failure to use reasonable care for his/her own (safety) (well-being) (welfare) (*describe other economic interest*). If you find by the greater weight of the evidence that the plaintiff failed to exercise reasonable care, then he/she was negligent.
3. COMPARATIVE NEGLIGENCE/CONTRIBUTORY FAULT. OJI-CV Chapter 403.

#### COMMENT

For claims for relief accruing after 4/9/2003, see R.C. §§ 2315.32 through .36.

4. PROXIMATE CAUSE. OJI-CV Chapter 405.

#### **CV 421.07 Interrogatories (claims arising on and after 4/9/03) [Rev. 2/27/21]**

#### COMMENT

The following interrogatories are required in all non-medical professional negligence cases. R.C. 2315.34. For interrogatories involving contributory negligence/fault, see OJI-CV Chapter 403.

1. INTRODUCTION TO INTERROGATORIES. OJI-CV 321.01.
2. INTERROGATORIES.

### COMMENT

The following interrogatories are designed for only one plaintiff. If there is more than one plaintiff, a separate set of interrogatories should be used for each plaintiff.

Only those portions of the following interrogatories that are supported by some evidence should be used.

#### (A) WAS THE DEFENDANT NEGLIGENT?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more of the jurors to (A) is “yes,” move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury) (damage), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate in answering Interrogatory (B).

(2) If the answer of (six) (three-fourths) or more of the jurors to (A) is “no,”

(a) do not answer the remaining interrogatories, and

(b) sign the general verdict form for the defendant, and

(c) report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) of the jurors cannot agree on an answer to Interrogatory (A), report this to the court.

### COMMENT

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

#### (B) WAS THE DEFENDANT’S NEGLIGENCE A DIRECT AND PROXIMATE



## CAUSE OF ANY (INJURY) (DAMAGE) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more of the jurors to (B) is “yes,” move to Interrogatory (C), and all jurors shall participate.

(2) If the answer of (six) (three-fourths) or more of the jurors to (B) is “no,”

(a) do not answer the remaining Interrogatories, and

(b) sign the general verdict for the defendant, and

(c) report to the court that you have completed your deliberations.

(3) If (six) (three-fourths) of the jurors cannot agree on an answer to (B), report this to the court.

**COMMENT**

The Committee believes that since the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

**(C) PLEASE STATE THE FOLLOWING:****COMMENT**

If evidence is presented regarding future damages, additional interrogatories may be required. See OJI-CV 417.19 for sample interrogatories and instructions.

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF: \$\_\_\_\_\_

(a) To determine this amount, “economic loss” means any of the following:

(i) all wages, salaries or other compensation lost as a result of the defendant’s negligence;

(ii) all expenditures for services, products, or accommodations as a result of the defendant’s negligence;

(iii) all expenditures in order to repair or replace property injured or destroyed as a result of the defendant’s negligence; and

(iv) any other expenditures or losses incurred as a result of the defendant’s negligence.

**COMMENT**

Drawn from R.C. 2307.011(C)

_____	_____
_____	_____
_____	_____
_____	_____

(b) If (six) (three-fourths) or more of the jurors cannot agree on the answer to Interrogatory (C)(1), report this to the court.

(c) Move to Interrogatory (C)(2).

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS OF THE PLAINTIFF: \$\_\_\_\_\_

(a) To determine this amount, “non-economic loss” means pain and suffering, mental anguish, loss of society, consortium, companionship, care, assistance, attention, protection, advice, guidance, counsel, instruction, training or education, and any other intangible loss experienced as a result of the defendant’s negligence.

**COMMENT**

Drawn from R.C. 2307.011(F).

_____	_____
_____	_____
_____	_____
_____	_____

(b) If (six) (three-fourths) or more of the jurors cannot agree on the answer to Interrogatory (C)(2), report this to the court.

(c) Move to (C)(3).

(3) COMPLETION OF VERDICT FORM. The total amount of the compensatory damages sustained by the plaintiff is determined by adding the amount of damages for economic loss from Interrogatory (C)(1) to the amount of damages for non-economic loss from Interrogatory (C)(2). Enter the total amount on the Verdict Form for Plaintiff. Complete the verdict form for the plaintiff and notify the court that you have completed your deliberations.

**COMMENT**

R.C. 2307.22, 2307.23.



3. GENERAL VERDICT FORM. OJI-CV 403.01.





## Chapter CV 429

# ASSAULT, BATTERY, INFLICTION OF SERIOUS EMOTIONAL DISTRESS

- CV 429.01 Civil assault *[Rev. 8-16-06]*
- CV 429.03 Battery *[Rev. 8-16-06]*
- CV 429.05 Intentional infliction of serious emotional distress *[Rev. 12-11-05]*
- CV 429.07 Negligent infliction of serious emotional distress
- CV 429.09 Intentional tort claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*
- CV 429.11 Intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) *[Rev. 2/27/21]*

### CV 429.01 Civil assault *[Rev. 8-16-06]*

1. CIVIL ASSAULT. An assault is the intentional offer or attempt, without authority or consent, to harm or offensively touch another that reasonably places the other in fear of such contact.

Words alone do not constitute assault, but must be coupled with some definite act by one with apparent ability to carry out the offensive act.

2. BURDEN OF PROOF. OJI-CV 303.03.

3. PREPONDERANCE. OJI-CV 303.05.

4. PROXIMATE CAUSE. OJI-CV 405.01 §§ 2, 3.

5. COMPENSATORY DAMAGES, GENERAL AND SPECIAL. OJI-CV Chapter 315.

6. INTERROGATORIES. OJI-CV 429.09, OJI-CV 429.11.

### COMMENT

These interrogatories are required in cases involving multiple defendants or claims of non-party liability.

7. PUNITIVE DAMAGES. OJI-CV 315.37.

8. AFFIRMATIVE DEFENSES. Examples: privilege, consent, self-defense and justification.

**COMMENT**

OJI-CV 303.03 § 4.

Civil assault is to be distinguished from criminal assault, R.C. 2903.13 and negligent assault, R.C. 2903.14. The essence of civil assault is the plaintiff's apprehension of harm, whether or not the actor actually has the ability to inflict the physical contact or threatened bodily harm. Without apprehension of harm there is no assault. *Ryan v. Conover* (1937), 59 Ohio App. 361, 363, and apprehension is a subjective matter. Restatement, Second, Torts, § 27. The possible defenses to civil assault and civil battery are very similar. Defenses may include defenses of third persons' property or person, regaining of property of one or another, aggression of plaintiff by threats, abuse or hostile attitude. Provocation may be shown to mitigate punitive damages. For self-defense, see OJI-CR 421.19, OJI-CR 421.21, and OJI-CR 421.23.

**CV 429.03 Battery [Rev. 8-16-06]**

1. **BATTERY.** Battery is intentional, unconsented, contact with another.

**COMMENT**

Contact with another may include contact with his/her clothing or objects held by him/her. A battery may occur without actual physical harm.

An action for battery will not lie if the plaintiff expressly or impliedly consents to a lawful act resulting in the bodily contact, unless the act is different in nature or degree from the consented to intrusion, e.g., a friendly tussle is not consent to mayhem, or consent to an operation on a foot is not consent to amputate the leg. One cannot consent to an unlawful act, e.g., statutory rape.

Consent means acquiescence to the touching, with sufficient knowledge and understanding. *Belcher v. Carter* (1967), 13 Ohio App.2d 113. See OJI-CV 417.05.

2. **PROXIMATE CAUSE.** OJI-CV 405.01 §§ 2, 3.
3. **COMPENSATORY DAMAGES, NOMINAL, GENERAL AND SPECIAL.** OJI-CV 315.01 et seq.
4. **INTERROGATORIES.** OJI-CV 429.09, OJI-CV 429.11.

**COMMENT**

These interrogatories are required in cases involving multiple defendants or claims of non-party liability.

5. **PUNITIVE DAMAGES.** OJI-CV 315.37.
6. **AFFIRMATIVE DEFENSES.** Examples: privilege, consent, self-defense and justification.



**COMMENT**

OJI-CV 303.03 § 4. For self-defense, see OJI-CR 421.19, OJI-CR 421.21, and OJI-CR 421.23.

**CV 429.05 Intentional infliction of serious emotional distress [Rev. 12-11-05]****COMMENT**

For negligent infliction of serious emotional distress see OJI-CV 429.07.

1. (A) DEFINITION. Whenever an individual intentionally or recklessly acts in an extreme and outrageous manner so as to cause serious emotional distress to another, he may be held liable for any mental or physical injury caused.

**COMMENT**

*Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369; *Reamsnyder v. Jaskolski* (1984), 10 Ohio St.3d 150.

(B) ADDITIONAL. Liability exists only where the (conduct) (acts) (is) (are) so outrageous in character and so extreme in degree, that (it) (they) (goes) (go) beyond all possible bounds of decency and may be regarded as atrocious and utterly intolerable in a civilized community.

(C) MERE INSULTS. Mere (insults) (indignities) (threats) (annoyances) (petty oppressions) are not enough. All people (plaintiffs) are (expected) (required) to be hardened to a certain amount of rough language or acts which are inconsiderate or unkind. The law does not intervene in every case where feelings are hurt and there is still freedom to express an unflattering opinion.

2. ELEMENTS. In order to recover the plaintiff must prove by the greater weight of the evidence three elements:

(1) That the defendant intentionally or recklessly acted in an extreme and outrageous manner.

(2) That defendant's actions proximately caused plaintiff's psychic (and) physical injuries.

(3) That plaintiff's mental anguish was serious and of a nature that no reasonable man could be expected to endure.

3. INTEND (INTENT). A person acts intentionally when he has the (purpose) (conscious objective) to produce a specific result. A person intends an act when it is done purposely, not accidentally. The intent with which a person does an act is known only to himself, unless he expresses it to others or indicates it by his conduct.

4. RECKLESSLY. A person acts recklessly when with heedless indifference to the

consequences he perversely disregards a known risk that his conduct is likely to cause serious emotional distress.

5. **EXTREME AND OUTRAGEOUS.** An act is extreme and outrageous when it passes all reasonable bounds of decency and is excessive, wanton, or gross.

6. **SERIOUS.**

(A) The emotional distress or mental anguish must be serious. A reasonable person, of normal mental condition, would be unable to (contend with) (face) satisfactorily a serious (mental anguish) (emotional distress).

(B) **ADDITIONAL.** The law cannot provide damages or protect against all mental anguish. People are required to (endure) (suffer) some emotional discomfort. To recover the plaintiff must prove by the greater weight of the evidence that the distress is serious.

7. **DAMAGES.** OJI-CV 315.01 et seq.

#### COMMENT

Be sure to include words which cover mental and emotional as well as physical health.

8. **INTERROGATORIES.** OJI-CV 429.09, OJI-CV 429.11.

#### COMMENT

These interrogatories are required in cases involving multiple defendants or claims of non-party liability.

9. **PUNITIVE DAMAGES.** OJI-CV 315.37.

10. **CONCLUSION.** OJI-CV Chapter 313.

#### COMMENT

This is an intentional tort. Remove words “of negligence” from conclusory paragraphs.

### CV 429.07 Negligent infliction of serious emotional distress

#### COMMENT

Whether the emotional distress was serious enough to allow recovery is first for the court to decide as a matter of law. *Paugh v. Hanks* (1983), 6 Ohio St.3d 72, 6 Ohio B. 114, 451 N.E.2d 759.

“The *Paugh* standard creates a two-tier determination that is not otherwise applicable in the determination of mental damages to a person who is actually involved in the accident. The court first determines as a matter of law whether there was proof of emotional distress that was more than trifling, mere upset, or hurt



feelings. Then the jury is instructed to find whether the emotional distress actually suffered reached the level of serious or debilitating emotional distress.” *Binns v. Fredendall* (1987), 32 Ohio St.3d 244, 245, n. 1, 513 N.E.2d 278, 280, n. 1.

Whether the harm was foreseeable is also first to be decided by the court on a case by case basis, analyzing all the circumstances, excluding the remote and unexpected. *Burris v. Grange Mutual Cos.* (1989), 46 Ohio St.3d 84, 92, 545 N.E.2d 83.

The claim for negligent infliction of emotional distress should not be confused with claims for emotional and psychic injuries sustained contemporaneously with a physical injury as such emotional distress need not be severe or debilitating. *Binns v. Fredendall, supra.*

1. GENERAL. To recover for negligent infliction of serious emotional distress, plaintiff must prove by the greater weight of the evidence that:

- (A) The defendant was negligent;
- (B) The plaintiff suffered serious emotional distress;
- (C) The serious emotional distress was the direct result of the negligence of the defendant;
- (D) The serious emotional distress of the plaintiff was reasonably foreseeable by the defendant at the time of the alleged negligence.

#### COMMENT

*Schultz v. Barberton Glass Company* (1983), 4 Ohio St.3d 131, 447 N.E.2d 109.

2. NEGLIGENCE. OJI-CV 401.01.

3. SERIOUS EMOTIONAL DISTRESS. Serious emotional distress describes injury which is both severe and debilitating. It does not extend to mere insults, indignities, threats, annoyances, petty oppression or mere trivialities. Thus, serious emotional distress may be found where a reasonable person, normally constituted, would be unable to cope adequately with the mental distress caused by the circumstances of the case. It is mental anguish of a nature that no reasonable person could be expected to endure. You may consider any evidence of a resulting physical (impairment) (condition) in judging the degree of emotional distress suffered.

#### COMMENT

*Reamsnyder v. Jaskolski* (1984), 10 Ohio St.3d 150, 462 N.E.2d 392; *Yeager v. Local Union 20* (1983), 6 Ohio St.3d 369, 453 N.E.2d 666; *Paugh v. Hanks, supra*; *Pyle v. Pyle* (1983), 11 Ohio App.3d 31, 463 N.E.2d 98 (intentional act).

4. REASONABLY FORESEEABLE. In determining whether serious emotional distress was reasonably foreseeable by defendant you should consider all of the circumstances of the parties existing at the time of the alleged negligence of the defendant.

**COMMENT**

No one standard charge will be applicable to all cases. For factors to be considered see *Paugh v. Hanks*, *supra*, syllabus 3b. For examples see *Pyle v. Pyle*, *supra*; *Carney v. Knollwood Cemetery Assn.* (1986), 33 Ohio App.3d 31, 514 N.E.2d 430 (mishandling of dead body); *Molien v. Kaiser Foundation Hospitals* (1980), 167 Cal. Rptr. 831, 616 P.2d 813 (misdiagnosis of syphilis); *Bass v. Nooney* (1983 Missouri), 646 S.W.2d 765 (one trapped in an elevator); *Prosser and Keeton*, *The Law of Torts* (5th ed. 1984) 361, Sec. 54; and OJI-CV 401.07.

5. BURDEN OF PROOF. OJI-CV 303.03.

6. PROXIMATE CAUSE. OJI-CV 405.01.

7. DAMAGES. OJI-CV Chapter 315.

8. CONCLUSIONS. OJI-CV Chapter 313.

**CV 429.09 Intentional tort claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

**COMMENT**

R.C. 2307.011(D) defines an intentional tort claim as one alleging “that a tortfeasor intentionally caused or intentionally contributed to the injury or loss to person or property or the wrongful death or that a tortfeasor knew or believed that the injury or loss to person or property or the wrongful death was substantially certain to result from the tortfeasor’s conduct.” The Committee believes that the legislature did not intend to modify the elements of any common law intentional tort.

R.C. 2307.22 and 2307.23 allocate damages based on the intentional conduct of multiple actors, as defined in R.C. 2307.011(D).

S.B. 120 provides that tortious conduct of other responsible parties or persons can reduce the damages available to a plaintiff who otherwise meets the burden of proof and persuasion. R.C. 2307.22 and 2307.23. The judge must identify every potentially liable person.

The interrogatories are designed for cases in which there is only one plaintiff, and all defendants are alleged to have acted intentionally. If there is more than one plaintiff, a separate set of interrogatories should be used for each plaintiff. If more than two responsible persons are involved, the interrogatories will have to be expanded.

1. INTRODUCTION TO INTERROGATORIES.

**COMMENT**

OJI-CV 321.01.



Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

## 2. INTERROGATORIES.

(A) DID (insert name of defendant 1) (identify intentional tort with respect to plaintiff)?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury)(damages), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate in answering Interrogatory (B).

### COMMENT

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake and Ohio Railroad* (1991), 58 Ohio St.3d 226.

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no,”

(a) sign the general verdict for (insert name of defendant 1), and

(b) move to interrogatory (C).

(3) If six jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS THE (identify intentional tort) COMMITTED BY (insert name of defendant 1) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____

\_\_\_\_\_  
 \_\_\_\_\_

(1) If the answer of (six) (three-fourths) or more jurors to (B) is “yes,” move to Interrogatory (C) and all jurors may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (B) is “no,”

(a) sign the general verdict for (*insert name of defendant 1*),

(b) move to Interrogatory (C) and all jurors may participate.

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (B), report this to the court.

(C) DID (*insert name of defendant 2*) (*identify intentional tort with respect to plaintiff*).

CIRCLE YOUR ANSWER IN INK

YES or NO

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(1) If the answer of (six) (three-fourths) or more jurors to (C) is “yes,” move to Interrogatory (D) and only those jurors who answered “yes” to (C) may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (C) is “no,” sign the general verdict for (*insert name of defendant 2*).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS THE (*identify intentional tort*) COMMITTED BY (*insert name of Defendant 2*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY)(DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(1) If the answer of (six) (three-fourths) or more jurors to (D) is “yes,” move to Interrogatory (E) and all jurors may participate.

(2) If the answer of (six) (three-fourths) or more jurors to (D) is “no,” sign the general verdict for (*insert name of defendant 2*).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (D),



report this to the court.

(E) (WAS [*insert identity of non-party*] NEGLIGENT?) (DID [*insert identity of non-party*] [*describe other tortious conduct*]?)

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (E) is “yes,” move to Interrogatory (F). In answering the following Interrogatory (F) about whether the conduct of (*insert identity of non-party*) was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (E) are qualified to participate in answering Interrogatory (F).

(2) If the answer of (six) (three-fourths) or more jurors to (E) is “no,” move to Interrogatory (G).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (E), report this to the court.

(F) WAS THE (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (F) is “yes” or “no,” move to Interrogatory (G).

(2) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (F), report this to the court.

(G) In answering the following Interrogatory (G) about the percentages of (*describe tortious conduct*) that was a direct and proximate cause of the plaintiff’s (injury) (damages), please observe the following:

(1) For each (non party) (person who was not sued) who proximately caused the Plaintiff’s (injury) (damages) state the percentage of (*describe all tortious conduct that caused the plaintiff’s [injuries] [damages]*) attributable to that person.

(2) For each defendant whose (*describe tortious conduct*) proximately caused the plaintiff’s (injury) (damages) state the percentage of (*describe all tortious conduct*

that proximately caused the plaintiff's [injury] [damages]) attributable to that person.

(3) ENTER PERCENTAGES.

(a) PERCENTAGE OF (describe all tortious conduct) ATTRIBUTABLE TO:  
(insert name of defendant 1, if applicable): \_\_\_\_\_%

(b) PERCENTAGE OF (describe all tortious conduct) ATTRIBUTABLE TO  
(insert name of defendant 2, if applicable): \_\_\_\_\_%

(c) PERCENTAGE OF (NEGLIGENCE) (describe other tortious conduct)  
ATTRIBUTABLE TO THE FOLLOWING PERSON (identity non-party): \_\_\_\_\_%

**COMMENT**

The judge must identify every potentially liable person. This interrogatory must be modified to include every potentially liable party and non-party.

(d) The percentages attributable to defendant(s) and other person(s) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(4) If (six) (three-fourths) jurors cannot agree on an answer to interrogatory (G) report this to the court.

(5) When (six) (three-fourths) jurors have agreed on an answer to interrogatory (G):

(a) move to Interrogatory (H), and all the jurors shall participate in the deliberations, and

(b) sign the general verdict for the plaintiff.

(H) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____



**COMMENT**

The Committee believes that since the issues relating to damages are analytically different from those relating to liability, the determination of damages may be made by all jurors.

**(I) PLEASE STATE THE FOLLOWING:**

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS TO THE PLAINTIFF: \$\_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS TO THE PLAINTIFF: \$\_\_\_\_\_

(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

**COMMENT**

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability. R.C. 2307.22, 2307.23.

3. **COMPENSATORY DAMAGES.** "Compensatory damages" include both economic and non-economic loss.

**COMMENT**

When plaintiff's claim for future damages exceeds \$200,000, see introductory comment to OJI-CV 403.05.

4. **ECONOMIC LOSS.** R.C. 2307.011.

5. **NON-ECONOMIC LOSS.** R.C. 2307.011.

6. **GENERAL VERDICT.** OJI-CV 403.01 § 4 (claims arising before 1/5/88).

**CV 429.11 Intentional tort with other tortious conduct claims, allocation of damages, multiple defendants, interrogatories required (claims arising on and after 4/9/03) [Rev. 2/27/21]**

**COMMENT**

R.C. 2307.011(D) defines an intentional tort claim as one alleging "that a

tortfeasor intentionally caused or intentionally contributed to the injury or loss to person or property or the wrongful death or that a tortfeasor knew or believed that the injury or loss to person or property or the wrongful death was substantially certain to result from the tortfeasor's conduct." The Committee believes that the legislature did not intend to modify the elements of any common law intentional tort.

R.C. 2307.22 and 2307.23 allocate damages based on the intentional conduct of multiple actors, as defined in R.C. 2307.011(D).

S.B. 120 provides that tortious conduct of other responsible parties or persons can reduce the damages available to a plaintiff who otherwise meets the burden of proof and persuasion. R.C. 2307.22 and 2307.23. The judge must identify every potentially liable person.

These interrogatories are designed for cases in which a single plaintiff has alleged an intentional tort against one or more defendants and a non-intentional tort against one or more defendants. If there is more than one plaintiff, a separate set of interrogatories should be used for each.

R.C. 2307.22 and .23 provide for allocation of responsibility/damages based on multiple actors' roles in causing damages by intentional conduct as defined in R.C. 2307.011(D) and/or other tortious conduct.

For employer intentional torts, see OJI-CV 537.05.

## 1. INTRODUCTION TO INTERROGATORIES.

### COMMENT

OJI-CV 321.01.

Ohio follows the "same juror" rule. *O'Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O'Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that "a juror who failed to find negligence was still able to determine proximate cause"); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that "standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O'Connell*, and therefore we do not invoke the 'same juror' rule herein").

## 2. INTERROGATORIES.

(A) DID (insert name of defendant 1) (describe non-intentional tortious conduct claimed by plaintiff)?

CIRCLE YOUR ANSWER IN INK

YES or NO

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



(1) If the answer of (six) (three-fourths) or more jurors to (A) is “yes,” move to Interrogatory (B). In answering the following Interrogatory (B) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury)(damages), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate.

### COMMENT

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake and Ohio Railroad* (1991), 58 Ohio St.3d 226.

(2) If the answer of (six) (three-fourths) or more jurors to (A) is “no,”

(a) sign the general verdict for (*insert name of defendant 1*), and

(b) move to Interrogatory (C).

(3) If six jurors cannot agree on an answer to Interrogatory (A), report this to the court.

(B) WAS (*insert name of defendant 1*) (*describe non-intentional tortious conduct claimed by plaintiff*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY)(DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) of the jurors have answered “yes” to Interrogatory (B) move to Interrogatory (C).

(2) If (six) (three-fourths) of the jurors have answered “no” to Interrogatory (B)

(a) sign the general verdict for (*insert name of defendant 1*), and

(b) move to Interrogatory (C).

(3) If *six jurors cannot agree on* an answer to Interrogatory (B), report this to the court.

(C) DID (*insert name of defendant 2*) (*describe intentional tortious conduct claimed by plaintiff*)?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____

\_\_\_\_\_  
 \_\_\_\_\_

(1) If (six) (three-fourths) of the jurors have answered “yes” to Interrogatory (C), move to Interrogatory (D). In answering the following Interrogatory (D) about whether the defendant’s conduct was a direct and proximate cause of the plaintiff’s (injury)(damages), only those jurors who answered “yes” to Interrogatory (C) are qualified to participate.

(2) If (six) (three-fourths) of the jurors have answered “no” to Interrogatory (C), sign the verdict for (*insert name of defendant 2*) and move to Interrogatory (E) only if you have answered “yes” to both interrogatories (A) and (B). If you have signed the verdict forms for both (*insert names of defendants 1 and 2*) report this to the court.

(3) If six jurors cannot agree on an answer to Interrogatory (C), report this to the court.

(D) WAS (*insert name of defendant 2*) (*describe intentional tortious conduct claimed by plaintiff*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) of the jurors have answered “yes” to interrogatories (C) and (D), and you have signed the general verdict for (*insert name of defendant 1*), move to Interrogatory (H).

(2) If (six) (three-fourths) of the jurors have answered “no” to Interrogatory (D), sign the verdict for (*insert name of defendant 2*) and move to Interrogatory (E) only if you have answered “yes” to both interrogatories (A) and (B). If you have signed the verdict forms for both (*insert names of defendants 1 and 2*) report this to the court.

(3) If six jurors cannot agree on an answer to Interrogatory (D), report this to the court.

(E) (WAS THE PLAINTIFF NEGLIGENT?) (DID THE PLAINTIFF IMPLIEDLY ASSUME THE RISK OF INJURY?) (DID THE PLAINTIFF [*DESCRIBE OTHER TORTIOUS CONDUCT*]?)

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____



\_\_\_\_\_  
 \_\_\_\_\_

(1) If the answer of six or more jurors to (E) is “yes,” move to Interrogatory (F). In answering the following Interrogatory (F), only those jurors who answered “yes” to Interrogatory (E) are qualified to participate.

(2) If six jurors cannot agree on an answer to Interrogatory (E), report this to the Court.

(3) If the answer of six or more jurors to (E) is “no,” and only one defendant remains, sign the general verdict for the plaintiff and move to Interrogatory (H).

(4) If the answer of six or more jurors to (E) is “no,” and more than one defendant remains, sign the general verdict for the plaintiff and move to Interrogatory (G).

(F) WAS THE PLAINTIFF’S (NEGLIGENCE) (ASSUMPTION OF THE RISK) (*DESCRIBE TORTIOUS CONDUCT*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of six or more jurors to (F) is “no,” and the answer of six or more jurors to both (A) and (B) is “yes,” and the answer to either (C) or (D) is “no,” sign the general verdict for the plaintiff and move to Interrogatory (H).

(2) If the answer of six or more jurors to (F) is “no,” and the answer of six or more jurors to either (A) or (B) is “no,” and the answer to both (C) and (D) is “yes,” sign the general verdict for the plaintiff and move to Interrogatory (H).

(G) (WAS [*insert identity of non-party*] NEGLIGENCE?) (DID [*insert identity of non-party*] [*describe other tortious conduct*]?)

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If the answer of (six) (three-fourths) or more jurors to (G) is “yes,” move to Interrogatory (H). In answering the following Interrogatory (H) about whether the conduct of (*insert identity of non-party*) was a direct and proximate cause of the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (G) are qualified to participate.

(2) If the answer of (six) (three-fourths) or more jurors to (G) is “no,” move to Interrogatory (I).

(3) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (G), report this to the court.

(H) WAS THE (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) A DIRECT AND PROXIMATE CAUSE OF ANY (INJURY) (DAMAGES) TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK

YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

(1) If (six) (three-fourths) jurors cannot agree on an answer to Interrogatory (H), report this to the court.

(2) If the answer of (six) (three-fourths) or more jurors to (H) is “yes” or “no,” move to Interrogatory (I). In answering the following Interrogatory (I) about the percentages of conduct that was a direct and proximate cause of the plaintiff’s (injury) (damages), select one of the following alternatives:

(a) PLAINTIFF, (*insert name of defendant 1*), (*insert name of defendant 2*), AND (*insert identity of non-party*) ALL RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H) move to Interrogatory (I)(1). Only those jurors who answered “yes” to all eight Interrogatories (A), (B), (C), (D), (E), (F), (G), and (H) are qualified to participate in answering Interrogatory (I)(1).

(b) PLAINTIFF, (*insert name of defendant 1*), AND (*insert name of defendant 2*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (E), and (F) move to Interrogatory (I)(2). Only those jurors who answered “yes” to Interrogatories (A), (B), (C), (D), (E), and (F) are qualified to participate in answering Interrogatory (I)(2).

(c) ONLY PLAINTIFF AND (*insert name of defendant 1*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (E), and (F) move to Interrogatory (I)(3). Only those jurors who answered “yes” to Interrogatories (A), (B), (E), and (F) are qualified to participate in answering Interrogatory (I)(3).

(d) ONLY (*insert name of defendant 1*), (*insert name of defendant 2*), AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), (D), (G), and (H) move to Interrogatory (I)(4). Only those jurors who



answered “yes” to Interrogatories (A), (B), (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(4).

(e) ONLY (*insert name of defendant 1*) AND (*insert name of defendant 2*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (C), and (D) move to Interrogatory (I)(5). Only those jurors who answered “yes” to Interrogatories (A), (B), (C), and (D) are qualified to participate in answering Interrogatory (I)(5).

(f) ONLY (*insert name of defendant 1*) AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (A), (B), (G), and (H) move to Interrogatory (I)(6). Only those jurors who answered “yes” to Interrogatories (A), (B), (G), and (H) are qualified to participate in answering Interrogatory (I)(6).

(g) ONLY (*insert name of defendant 2*) AND (*insert identity of non-party*) RESPONSIBLE FOR PLAINTIFF’S INJURY. If (six) (three-fourths) or more jurors answered “yes” to Interrogatories (C), (D), (G), and (H) move to Interrogatory (I)(7). Only those jurors who answered “yes” to Interrogatories (C), (D), (G), and (H) are qualified to participate in answering Interrogatory (I)(7).

(h) If less than (six) (three-fourths) jurors are qualified to answer (I)(1), (I)(2), (I)(3), (I)(4), (I)(5), (I)(6), or (I)(7) report this to the court.

(I)(1) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF, NEGLIGENCE OF (*insert name of defendant 1*), (*describe intentional tortious conduct*) OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF’S (INJURY) (DAMAGES):

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF: \_\_\_\_\_%

(ii) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(iii) PERCENTAGE OF (*describe intentional tortious conduct*) OF (*insert name of defendant 2*): \_\_\_\_\_%

(iv) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%

#### COMMENT

The judge must identify every potentially liable person.

(v) The percentages attributable to plaintiff, defendants, and non-party must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdicts for (*insert name of defendant 1*).

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(1) report this to the court.

(I)(2) STATE THE PERCENTAGES OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF, NEGLIGENCE OF (*insert name of defendant 1*), AND (*describe intentional tortious conduct*) OF (*insert name of defendant 2*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES):

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF:

\_\_\_\_\_%

(ii) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*):

\_\_\_\_\_%

(iii) PERCENTAGE OF (*describe intentional tortious conduct*) OF (*insert name of defendant 2*): \_\_\_\_\_%

#### COMMENT

The judge must identify every potentially liable person.

(iv) The percentages attributable to plaintiff and defendants must equal the total of:



100%


(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

(c) If the percentage attributable to the plaintiff is greater than 50%,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdicts for the (*insert name of defendant 1*).

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(2) report this to the court.

(I)(3) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (IMPLIED ASSUMPTION OF RISK) (*describe other tortious conduct*) OF THE PLAINTIFF THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (*describe other tortious conduct*) OF THE PLAINTIFF: \_\_\_\_\_%

(iii) The percentages attributable to plaintiff and (*insert name of defendant 1*) must equal the total of:

100%


(b) If the percentage attributed to the plaintiff is 50% or less,

(i) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(ii) sign the general verdict for the plaintiff.

- (c) If the percentage attributable to the plaintiff is greater than 50%,
- (i) do not sign Interrogatory (J), and
  - (ii) sign the general verdicts for the (*insert name of defendant 1*), and
  - (iii) report to the court that you have completed your deliberations.
- (d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(3) report this to the court.

(I)(4) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

- (i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%
- (ii) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%
- (iii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%
- (iv) The percentages attributable to plaintiff and defendants must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and sign the general verdict for the plaintiff.

- (c) If the percentage attributable to the plaintiff is greater than 50%,
- (d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(4) report this to the court.

(I)(5) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

- (i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%



(ii) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%

(iii) The percentages attributable to plaintiff and defendants must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(5) report this to the court.

(I)(6) STATE THE PERCENTAGES OF NEGLIGENCE OF (*insert name of defendant 1*) AND (NEGLIGENCE) (*describe other tortious conduct*) of (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF NEGLIGENCE OF (*insert name of defendant 1*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%

(iii) The percentages attributable to (*insert name of defendant 1*) and (*insert identity of non-party*) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(6) report this to the court.

(I)(7) STATE THE PERCENTAGES OF INTENTIONAL TORTIOUS CONDUCT

OF (*insert name of defendant 2*) AND (NEGLIGENCE) (*describe other tortious conduct*) of (*insert identity of non-party*) THAT WAS A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S (INJURY) (DAMAGES).

(a) ENTER PERCENTAGES.

(i) PERCENTAGE OF INTENTIONAL TORTIOUS CONDUCT OF (*insert name of defendant 2*): \_\_\_\_\_%

(ii) PERCENTAGE OF (NEGLIGENCE) (*describe other tortious conduct*) OF (*insert identity of non-party*): \_\_\_\_\_%

(iii) The percentages attributable to (*insert name of defendant 2*) and (*insert identity of non-party*) must equal the total of:

100%

_____	_____
_____	_____
_____	_____
_____	_____

(b) move to Interrogatory (J), and all the jurors shall participate in the deliberations, and

(c) sign the general verdict for the plaintiff.

(d) If (six) (three-fourths) jurors can not agree on an answer to Interrogatory (I)(7) report this to the court.

(J) STATE THE TOTAL AMOUNT OF COMPENSATORY DAMAGES TO THE PLAINTIFF WITHOUT REGARD TO THE PERCENTAGE OF (NEGLIGENCE) (IMPLIED ASSUMPTION OF THE RISK) (OR BOTH) ATTRIBUTED TO THE PLAINTIFF.

STATE YOUR ANSWER IN  
FIGURES IN INK

\$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

**COMMENT**

The Committee believes that since the issues relating to damages are analytically different from those relating to causal negligence, the determination of damages may be made by all jurors without regard to their individual votes on causal negligence.

(K) PLEASE STATE THE FOLLOWING:



(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF: \$\_\_\_\_\_

(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NON-ECONOMIC LOSS OF THE PLAINTIFF: \$\_\_\_\_\_

(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NON-ECONOMIC" LOSS): \$\_\_\_\_\_

_____	_____
_____	_____
_____	_____
_____	_____

#### COMMENT

S.B. 120 requires that the jury distinguish between economic and non-economic damages. The distinction between economic and non-economic damages is significant, as different percentages of each may be recoverable against particular defendants, depending upon the allocation of liability. R.C. 2307.22, 2307.23.

3. COMPENSATORY DAMAGES. "Compensatory damages" include both economic and non-economic loss.

#### COMMENT

When plaintiff's claim for future damages exceeds \$200,000, see OJI-CV 403.05 (claims on and after 1/5/88 but before 4/9/03).

4. ECONOMIC LOSS. R.C. 2307.011(C).

5. NON-ECONOMIC LOSS. R.C. 2307.011(F).

6. GENERAL VERDICT. OJI-CV 403.03 § 4 (claims arising before 1/5/88).

[Next Page is 361]





# Chapter CV 433

## INVASION OF PRIVACY

- CV 433.01     Intrusion upon seclusion of another [Rev. 11/7/20]  
CV 433.03     Public disclosure of embarrassing private facts [Rev. 11/7/20]  
CV 433.05     Publicity placing a person in false light [Rev. 11/7/20]  
CV 433.07     Appropriation of name or likeness [Rev. 11/7/20]  
CV 433.09     Right of publicity in individual's persona (claims arising on and after 11/22/99)  
                  [Rev. 11/7/20]

### COMMENT

A person who invades the right of privacy of another person may be subject to liability for the resulting harm to the interests of the other person. *Sustin v. Fee* (1982), 69 Ohio St.2d 143. The right of privacy is the right of a person to be let alone. It is the right to be free from the unwarranted appropriation or exploitation of one's personality; the publicizing of one's private affairs with which the public has no legitimate concern; the wrongful intrusion into one's private activities in such a manner as to outrage or cause mental suffering, shame, or humiliation to a person of ordinary sensibilities; and to live without publicity that places one in a false light in the public eye. *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451. The burden of proof is upon the plaintiff to prove the plaintiff's claim by a preponderance of the evidence.

### CV 433.01     Intrusion upon seclusion of another [Rev. 11/7/20]

1. GENERAL. The plaintiff claims that the defendant violated his/her right of privacy by wrongfully intruding upon plaintiff's (seclusion) (solitude) (private activities).
2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that
  - (A) the defendant acted intentionally when he/she/it intruded, physically or otherwise, upon the (seclusion) (solitude) (private activities) of plaintiff; and
  - (B) the defendant's conduct of (*describe conduct*) would be highly offensive to a reasonable person.

### COMMENT

Drawn from *Sustin v. Fee*, 69 Ohio St.2d 143 (1982); *Miller v. Cincinnati Children's Hosp. Med. Ctr.*, 1st Dist. Hamilton No. C-050738, 2006-Ohio-3861; Restatement of the Law 2d, Torts, Section 652B (1977).

3. PRIVATE ACTIVITY (ADDITIONAL). "Private activity" means one's private

affairs or concerns that are not public in nature and are of no legitimate concern to the public.

#### COMMENT

Drawn from *Housh v. Peth*, 165 Ohio St. 35 (1956); see also *Lunsford v. Sterilite of Ohio, L.L.C.*, \_\_\_ Ohio St.3d \_\_\_, 2020-Ohio-4193.

4. INTENTIONALLY (INTENT). OJI-CV 429.05(C)(3).
5. CONCLUSION. OJI-CV Chapter 313.
6. PROXIMATE CAUSE. OJI-CV 405.01.
7. DAMAGES. OJI-CV Chapter 315.

#### **CV 433.03 Public disclosure of embarrassing private facts [Rev. 11/7/20]**

1. GENERAL. The plaintiff claims that the defendant violated his/her right of privacy by publishing information concerning the plaintiff's private life.
2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that
  - (A) the defendant publicized the information to the public at large; and
  - (B) the matter disclosed concerned the private life of the plaintiff; and
  - (C) the matter disclosed would be highly offensive to a reasonable person; and
  - (D) the publicity of the matter by the defendant was made intentionally and not negligently; and
  - (E) the matter publicized must not be of legitimate concern to the public.

#### COMMENT

Drawn from *Dalton v. Ohio Dept. of Rehab. & Corr.*, 10th Dist. Franklin No. 13AP-827, 2014-Ohio-2658; *Killilea v. Sears, Roebuck & Co.*, 27 Ohio App.3d 163 (10th Dist. 1985); Restatement of the Law 2d, Torts (1977), Section 652D.

3. PUBLICIZED OR PUBLICITY. "Publicized" or "publicity" means that the matter is made public by communicating it to the public at large or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.

#### COMMENT

Drawn from *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451; Restatement of the Law 2d, Torts, Section 652D, Comment a (1977).

4. PRIVATE LIFE OR PRIVATE MATTERS. "Private life" or "private matters" are distinguished from public matters. A private matter does not include information that



is already public such as the plaintiff's date of birth, marriage, military record, admission to the practice of medicine, or pleadings to a lawsuit. "Private life" does not include what the plaintiff leaves open to the public eye.

### COMMENT

Drawn from *Killilea v. Sears, Roebuck & Co*, 27 Ohio App.3d 163 (10th Dist. 1985); Restatement of the Law 2d, Torts, Section 652D, Comment b (1977).

5. INTENTIONALLY (INTENT). OJI-CV 429.05(C)(3).
6. CONCLUSION. OJI-CV Chapter 313.
7. PROXIMATE CAUSE. OJI-CV 405.01.
8. DAMAGES. OJI-CV Chapter 315.

### CV 433.05 Publicity placing a person in false light [Rev. 11/7/20]

1. GENERAL. The plaintiff claims that the defendant violated his/her right of privacy by publicizing false information that places the plaintiff in a false light before the public.

2. PROOF OF CLAIM. Before you can find for the plaintiff, you must find by the greater weight of the evidence that

(A) the defendant publicized a matter concerning the plaintiff; and

(B) the defendant knew that the publicized matter was false or acted in reckless disregard as to the falsity of the publicized matter; and

(C) the false light in which the plaintiff was placed would be highly offensive to a reasonable person.

### COMMENT

*Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451; Restatement of the Law 2d, Torts, Section 652E (1977).

3. FALSE LIGHT. "False light" means the defendant knows that the plaintiff, as a reasonable person, would be justified in the eyes of the community in feeling seriously offended and aggrieved by the publicity. The plaintiff's privacy is not invaded when the unimportant false statement is made, even when it is made deliberately. It is only when there is such a major misrepresentation of the plaintiff's character, history, activities, or beliefs that serious offense may reasonably be expected to be taken by a reasonable person in his/her position.

### COMMENT

Drawn from *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451; Restatement of the Law 2d, Torts, Section 652E, Comment c (1977).

The Supreme Court of Ohio has acknowledged that there may be multiple tort

claims arising under the same set of facts. In a number of cases to which a false light invasion of privacy claim applies, the publicity given to the plaintiff is defamatory, so that he/she would have an action for defamation. *See* OJI-CV Chapter 431. In such a case, the action for invasion of privacy will afford an alternative or additional remedy, and the plaintiff can proceed upon either theory, or both, although he/she can have but one recovery for a single instance of publicity. *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451; Restatement of the Law 2d, Torts, Section 652E, Comment b (1977).

4. **PUBLICIZED OR PUBLICITY.** “Publicized” or “publicity” means that the matter is made public by communicating it to the public at large or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge.

#### COMMENT

Drawn from *Welling v. Weinfeld*, 113 Ohio St.3d 464, 2007-Ohio-2451; Restatement of the Law 2d, Torts, Section 652D, Comment a (1977).

5. **KNOWINGLY.** “Knowingly” means that a person is aware of the existence of the facts and that his/her acts will probably (cause a certain result) (be of a certain nature). A person acts knowingly when he/she is aware that his/her conduct (will probably cause a certain result) (will probably be of a certain nature). Since you cannot look into the mind of another, (knowledge) (whether a person acted knowingly) is determined from all the facts and circumstances in evidence.

#### COMMENT

Drawn from R.C. 2901.22(B).

6. **RECKLESSLY.** OJI-CV Chapter 429.05(C)(4).

7. **CONCLUSION.** OJI-CV Chapter 313.

8. **PROXIMATE CAUSE.** OJI-CV 405.01.

9. **DAMAGES.** OJI-CV Chapter 315.

### **CV 433.07 Appropriation of name or likeness [Rev. 11/7/20]**

1. **GENERAL.** The plaintiff claims that the defendant violated his/her right of privacy by the appropriation of the plaintiff’s (personality) (name) (likeness) (identity) (reputation) (prestige) (social or commercial standing) (public interest) (*insert other value[s] of the plaintiff’s personality*) for the use or benefit of the defendant.

2. **PROOF OF CLAIM.** Before you can find for the plaintiff, you must find by the greater weight of the evidence that

(A) the defendant appropriated the (personality) (name) (likeness) (identity) (reputation) (prestige) (social or commercial standing) (public interest) (*insert other value[s] of*



*the plaintiff's personality*) of the plaintiff; and

(B) the defendant's appropriation was not (authorized) (justified); and

(C) the defendant's appropriation was for the use or benefit of the defendant.

#### COMMENT

Drawn from *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St.2d 224 (1976), reversed on other grounds, 433 U.S. 562 (1977); *James v. Bob Ross Buick, Inc.*, 167 Ohio App.3d 338, 2006-Ohio-2638 (2d Dist.); and *Vinci v. American Can Co.*, 69 Ohio App.3d 727 (8th Dist.1990).

3. APPROPRIATION. "Appropriation" means taking, making use of, or exploiting for one's own use or benefit something that belongs to another. It is not enough that the defendant has adopted for himself/herself/itself a name that is the same as the plaintiff, so long as the defendant does not pass himself/herself/itself off as the plaintiff or otherwise seek to obtain for himself/herself/itself the values or benefits of the plaintiff's (personality) (name) (likeness) (identity) (reputation) (prestige) (social or commercial standing) (public interest) (*insert other value[s] of the plaintiff's personality*). "Appropriation" does not include incidental use of another's (personality) (name) (likeness) (identity) (reputation) (prestige) (social or commercial standing) (public interest) (*insert other value[s] of the plaintiff's personality*).

#### COMMENT

Drawn from *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St.2d 224 (1976), reversed on other grounds, 433 U.S. 562 (1977); Restatement of the Law 2d, Torts, Section 652C, Comment c (1977).

The Supreme Court of Ohio in *Zacchini v. Scripps-Howard Broadcasting Co.* relies heavily on Section 652C of the Restatement of the Law 2d, Torts (1977). Several reviewing courts have observed that in 1995, the American Law Institute transferred its exposition of the right of publicity to the Restatement of the Law 3d, Unfair Competition, Section 46 (1995), entitled Appropriation of the Commercial Value of a Person's Identity: the Right of Publicity. *Harvey v. Sys. Effect*, 2d Dist. Montgomery No. 28497, 2020-Ohio-1642; *ETW Corp. v. Jireh Publishing, Inc.*, 332 F.3d 915 (6th Cir. 2003). However, the Supreme Court of Ohio has not yet modified the established standard for invasion of privacy by appropriation of the name or likeness of another in Ohio to conform to the language included in the Restatement of the Law 3d, Unfair Competition.

4. INCIDENTAL USE. "Incidental use" of another's (personality) (name) (likeness) (identity) (reputation) (prestige) (social or commercial standing) (public interest) (*insert other value[s] of the plaintiff's personality*) means mere mention of or reference to (it) (them) in connection with the legitimate mention of the other's public activities; or publication for purposes other than taking advantage of the other's reputation, prestige, or other value associated with him/her.



## COMMENT

Drawn from *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St.2d 224 (1976), reversed on other grounds, 433 U.S. 562 (1977); *Vinci v. Am. Can Co.*, 69 Ohio App.3d 727 (8th Dist. 1990); Restatement of the Law 2d, Torts, Section 652C, Comment d (1977).

The Supreme Court of Ohio in *Zacchini v. Scripps-Howard Broadcasting Co.* relies heavily on Section 652C of the Restatement of the Law 2d, Torts (1977). Several reviewing courts have observed that in 1995, the American Law Institute transferred its exposition of the right of publicity to the Restatement of the Law 3d, Unfair Competition, Section 46 (1995), entitled Appropriation of the Commercial Value of a Person's Identity: the Right of Publicity. *Harvey v. Sys. Effect*, 2d Dist. Montgomery No. 28497, 2020-Ohio-1642; *ETW Corp. v. Jireh Publishing, Inc.*, 332 F.3d 915 (6th Cir. 2003). However, the Supreme Court of Ohio has not yet modified the established standard for invasion of privacy by appropriation of the name or likeness of another in Ohio to conform to the language included in the Restatement of the Law 3d, Unfair Competition.

5. **USE OR BENEFIT.** When considering use or benefit to the defendant, you are not limited to (commercial) (pecuniary) (monetary) benefit.

## COMMENT

Drawn from *Zacchini v. Scripps-Howard Broadcasting Co.*, 47 Ohio St.2d 224 (1976), reversed on other grounds, 433 U.S. 562 (1977); 652C of the Restatement of the Law 2d, Torts (1977).

6. **CONCLUSION.** OJI-CV Chapter 313.  
 7. **PROXIMATE CAUSE.** OJI-CV 405.01.  
 8. **DAMAGES.** OJI-CV Chapter 315.

**CV 433.09 Right of publicity in individual's persona (claims arising on and after 11/22/99) [Rev. 11/7/20]**

1. **GENERAL.** The plaintiff claims that the defendant violated the plaintiff's right of publicity by using (his/her persona) (the persona of *[insert name of applicable individual]*) for a commercial purpose.
2. **PROOF OF CLAIM.** Before you can find for the plaintiff, you must find by the greater weight of the evidence that
- (A) the State of Ohio was (*[the plaintiff's]* *[insert name of applicable individual]*'s residence or domicile) (*[insert name of applicable individual]*'s residence or domicile at the date of the individual's death); and
- (B) the defendant used any aspect of (the plaintiff's) (*insert name of applicable individual*)'s (name) (voice) (signature) (photograph) (image) (likeness) (distinctive appearance) for a commercial purpose; and



(C) the defendant did not have written consent to use (the plaintiff's) (*insert name of applicable individual*)'s (name) (voice) (signature) (photograph) (image) (likeness) (distinctive appearance).

#### COMMENT

The following subsection (D) contains an additional element and should be included in the instruction only if there is evidence that the defendant is an owner or employee of a medium used for advertising. The court may modify these instructions utilizing OJI-CV Chapter 423, Agency, and consider using interrogatories.

The Committee believes that ownership or employment is in the nature of an affirmative defense and must be proved by the defendant.

(D) USE IN ADVERTISEMENT OR SOLICITATION (ADDITIONAL). If you find that the defendant has proved by the greater weight of the evidence that he/she is an (owner) (employee) of a (newspaper) (magazine) (radio or television network or station) (cable television system) (billboard) (transit ad) (global communications network) (*insert other medium used for advertising*), you must also find by the greater weight of the evidence that the defendant had knowledge that the use of (the plaintiff's) (*insert name of applicable individual*)'s persona in an advertisement or solicitation was unauthorized.

#### COMMENT

Drawn from R.C. 2741.02, R.C. 2741.03.

R.C. 2741.02 applies to decedents who died on or after 1/1/98, and for a period of 60 years after the individual's death. R.C. 2741.02 applies to deceased members of the Ohio national guard or the armed forces of the United States for a period of ten years after the date of death. If the individual is deceased, the court must modify section 2(B) of this instruction.

A defendant may lawfully use, for commercial purposes, the persona of an individual who has died if the defendant obtained written consent from a person specified in R.C. 2741.05 who owns the individual's right of publicity. R.C. 2741.02(B) permits the use of a decedent's persona without written consent if the decedent's name was the name of a business entity or a trade name at the time of the decedent's death.

The right of publicity in an individual's persona is freely transferrable and descendible, in whole or in part, by contract, license, gift, trust, will, or intestate succession. R.C. 2741.04.

The remedies provided under R.C. Chapter 2741 are in addition to those under the common law relating to privacy, as recognized by Ohio courts. R.C. 2741.08.

3. PERSONA. "Persona" means an individual's name, voice, signature, photograph, image, likeness, or distinctive appearance, if any of these aspects has commercial value.

**COMMENT**

R.C. 2741.01.

4. **COMMERCIAL PURPOSE.** “Commercial purpose” means the use of, or reference to, an aspect of an individual’s (name) (voice) (signature) (photograph) (image) (likeness) (distinctive appearance)

*(Use appropriate alternative[s])*

(A) on or in connection with a place, product, merchandise, goods, services, or other commercial activities;

*(or)*

(B) for advertising or soliciting the purchase of products, merchandise, goods, services, or other commercial activities;

*(or)*

(C) for the purpose of promoting travel to a place;

*(or)*

(D) for the purpose of fundraising.

**COMMENT**

R.C. 2741.01. For a discussion of the statute, see *Harvey v. Sys. Effect, LLC*, 2d Dist. Montgomery No. 28497, 2020-Ohio-1642, and *Roe v. Amazon.com*, 170 F. Supp. 3d 1028 (S.D. Ohio 2016).

5. **NAME.** “Name” means the actual, assumed, or clearly identifiable name of or reference to a living or deceased individual that identifies the individual.

**COMMENT**

R.C. 2741.01.

6. **RIGHT OF PUBLICITY.**

“Right of publicity” means the property right in an individual’s persona to use the individual’s persona for a commercial purpose.

**COMMENT**

R.C. 2741.01.

7. **WRITTEN CONSENT.** “Written consent” includes written, electronic, digital, or any other verifiable means of authorization.

**COMMENT**

R.C. 2741.01.



8. **KNOWINGLY.** “Knowingly” means that a person is aware of the existence of the facts and that his/her acts will probably (cause a certain result) (be of a certain nature). A person acts knowingly when he/she is aware that his/her conduct (will probably cause a certain result) (will probably be of a certain nature). Since you cannot look into the mind of another, (knowledge) (whether a person acted knowingly) is determined from all the facts and circumstances in evidence.

**COMMENT**

Drawn from R.C. 2901.22(B).

9. **AFFIRMATIVE DEFENSES:**

- (A) **GENERAL.** OJI-CV 303.03 § 4.
- (B) **CLAIMED AFFIRMATIVE DEFENSE.**

**COMMENT**

R.C. Chapter 2741 provides a statutory claim for relief for violation of the right of publicity in an individual’s persona. R.C. 2741.02(E) and R.C. 2741.09 exclude application of R.C. Chapter 2741 in particular circumstances. These circumstances include use of an aspect of a plaintiff’s persona in connection with a news story, broadcast, etc.; use in relation to a political campaign; use in a literary or dramatic work; use in an original work of fine art; use to correctly identify a plaintiff as the author or performer of a work; use in reporting an event of general public interest; use solely in plaintiff’s role as a member of the public if the plaintiff is not named or otherwise singled out as an individual; certain use by institutions of higher learning; and use protected by the First Amendment to the United States Constitution as long as the use does not convey or reasonably suggest endorsement by the plaintiff.

The Committee takes no position on whether these exceptions are in the nature of affirmative defenses or questions of law for the court. The trial court should address the exceptions as is appropriate under the facts and circumstances of each case and may need to draft appropriate instructions and consider using interrogatories.

10. **CONCLUSION.** OJI-CV Chapter 313.

11. **PROXIMATE CAUSE.** OJI-CV 405.01.

12. **DAMAGES.** If you find for the plaintiff, you will then decide what amount of money will compensate the plaintiff for the (actual) (statutory) damages caused by the defendant.

*(Use appropriate alternative)*

**COMMENT**

The plaintiff must elect actual damages or statutory damages.

R.C. 2741.07(D) authorizes the court to award additional items of damages such as attorney's fees, court costs, and expenses; to order injunctive relief; and to order the impoundment of products, merchandise, goods, or other materials alleged to have been made or used in violation of R.C. 2741.02, and plates, molds, etc. from which products or other materials may be reproduced.

Treble damages can only be awarded if a party identified in R.C. 2741.02(E) had knowledge of the unauthorized use. R.C. 2741.07(D)(2).

(A) **ACTUAL DAMAGES.** "Actual damages" include, but are not limited to, any profits derived from and attributable to the unauthorized use of an individual's persona for a commercial purpose.

**COMMENT**

Drawn from R.C. 2741.07(A)(1)(a) and (A)(2).

*(or)*

(B) **STATUTORY DAMAGES.** "Statutory damages" equals an amount of at least \$2,500 and not more than \$10,000, taking into account the willfulness of the violation, the harm to the persona in question, and the ability of the defendant to pay a civil damage award.

**COMMENT**

Drawn from R.C. 2741.07(A)(1)(b).

The Committee believes that "harm to the persona in question" means "harm to the plaintiff." R.C. 2741.07(A).

13. **PUNITIVE DAMAGES.** OJI-CV 315.37; R.C. 2741.07(A)(1)(c).

14. **WILLFUL MISCONDUCT.** OJI-CV 401.41 § 3.

*(Text continued on page 379)*



# Chapter CV 451

## PRODUCT LIABILITY

- CV 451.01 Statutory product liability [Rev. 5-7-11]
- CV 451.03 Statutory defect in manufacture or construction [Rev. 5-7-11]
- CV 451.05 Statutory defect in design or formulation [Rev. 5-7-11]
- CV 451.07 Statutory failure to warn [Rev. 5-7-11]
- CV 451.09 Statutory non-conformance to representation [Rev. 12-13-03]
- CV 451.11 Common law negligent design (claims arising before April 7, 2005) [Rev. 1-21-06]
- CV 451.13 Common law negligent construction or manufacture (for claims arising before April 7, 2005) [Rev. 1-21-06]
- CV 451.15 Common law negligent failure to warn by a manufacturer or supplier (for claims arising before April 7, 2005) [Rev. 1-21-06]
- CV 451.17 Common law breach of implied warranty [Rev. 1-21-06]
- CV 451.19 Affirmative defenses [Rev. 1-21-06]
- CV 451.21 Damages [Rev. 2-23-08]
- CV 451.23 Interrogatories (claims arising on and after 4/9/03) [Rev. 2/27/21]
- CV 451.01 Statutory product liability [Rev. 5-7-11]

### COMMENT

The Supreme Court held in *Carrel v. Allied Products Corp.*, 78 Ohio St.3d 284, 1997-Ohio-12, and *Cincinnati v. Beretta*, 95 Ohio St.3d 416, 2002-Ohio-2480, that certain claims asserting damages caused by a product have both a statutory form and a common law form. Therefore, for claims arising before 4/7/2005, plaintiffs can proceed under the Ohio Product Liability Act (OPLA) (effective 1/5/1988), R.C. 2307.71 et seq., or the common law, or both. For actions arising on and after 4/7/2005, the General Assembly abrogated in S.B. 80 all common law product liability claims for relief.

The Committee believes that the OPLA is applicable to harmful, tainted, or adulterated food products. The OPLA is applicable to a “product” that is broadly defined in the OPLA as “any object, substance, mixture, or raw material that constitutes tangible personal property.” A reasonable reading of this definition would include food products. Moreover, the OPLA specifically excludes certain goods that would otherwise fall within the definition of “product,” and foods products are not among the exceptions. In *Mitchell v. Fridays*, 140 Ohio App.3d 459 2000-Ohio-2591, the Seventh District Court of Appeals held that the OPLA did not apply to food products. However, the court in this case provided no reasoning for its conclusion. In a more recent case, *Woeste v. Washington Platform Saloon &*

*Restaurant*, 163 Ohio App.3d 70, 2005-Ohio-4694, the First District Court of Appeals held that the OPLA was applicable in a case involving allegations of harmful bacteria in raw oysters.

Although the Committee believes that the OPLA applies to allegations of harmful, tainted or adulterated food, it also believes that the warranty provisions of the UCC remain applicable to these allegations. See OJI-CV 505.13, OJI-CV 505.15. The Committee believes that there may also be a possible direct private claim for relief available for violation of Ohio's Adulterated Foods Act, R.C. 3715.52. See OJI-CV Chapter 450; *Donley v. Pinnacle Foods Group, LLC* (Dec. 28, 2009), S.D. Ohio No. 2:09-cv-540.

1. GENERAL. A manufacturer of a defective product is liable for harm that results when the product is used for its intended or reasonably foreseeable purpose.

#### COMMENT

Drawn from R.C. 2307.73.

2. MANUFACTURER. "Manufacturer" means a person engaged in a business to design, formulate, produce, create, make, construct, assemble, or rebuild a product or a component of a product.

#### COMMENT

R.C. 2307.71(A)(9).

3. HARM. "Harm" means death, physical injury to person, serious emotional distress, or physical damage to property other than the product in question.

#### COMMENT

R.C. 2307.71(A)(7).

If harm is established, economic loss may be recovered. See 2307.79(A). The Supreme Court has held that when commercial parties are in privity, economic damages are not recoverable under negligence, common law product liability theories, or statutory product liability. See *Cincinnati v. Beretta U.S.A. Corp.*, 95 Ohio St.3d 416, 2002-Ohio-2480; *Chemtrol Adhesives, Inc. v. American Mfrs. Mut. Ins. Co.* (1989), 42 Ohio St.3d 40. Commercial parties not in privity, however, may recover economic damages if the defective product caused tangible physical injury

(Text continued on page 419)



**CV 451.23 Interrogatories (claims arising on and after 4/9/03) [Rev. 2/27/21]****COMMENT**

The interrogatories in this instruction are based primarily on S.B. 120, effective 4/9/03. However, changes brought about by S.B. 80, effective 4/7/05, are included at the appropriate places.

These interrogatories are designed to permit the court to define the elements of the particular type(s) of product liability (breach of implied warranty, failure to warn, etc.) and the percentage determination of causation.

The Committee believes that for claims arising prior to April 9, 2003, the former comparative negligence statute, R.C. 2315.19, applies to products liability claims based on negligence. The common law and such other statutory provisions as were in effect governed other products claims. S.B. 120, effective April 9, 2003, repealed R.C. 2315.19, and changed the procedure for allocating liability among the various parties to the action, effectively creating new defenses and eliminating the common law concept of “joint and several” liability. The Committee therefore believes that the changes imposed by S.B. 120 apply to claims arising on and after April 9, 2003.

S.B. 120 provides that the negligence or other tortious conduct of the plaintiff or other persons who are not parties can reduce the damages available to a plaintiff who otherwise meets the burdens of proof and persuasion. R.C. 2315.43, 2315.44. The means for determining specific liability of individual parties (or non-parties) is set forth at these sections, and is similar — and in many cases identical — to the procedure to be followed under R.C. 2315.22 and 2315.23, which provide for allocation of awards in cases to which common law joint and several liability formerly applied.

The interrogatory responses should conform to the evidence or lack of evidence about the plaintiff’s negligence and the tortious conduct of other persons or parties.

R.C. 2315.44 requires the jurors to “return the general verdict accompanied by answers to interrogatories,” to determine the respective amounts of noneconomic and economic damages, and to allocate liability among the plaintiff and defendants by percentages. R.C. 2315.45 then requires the court to “diminish the total amount of the compensatory damages that would have been recoverable by an amount that is proportionately equal to the percentage of negligence or other tortious conduct determined pursuant to section 2307.23 of the Revised Code that is attributable to the plaintiff.” The Committee believes that the intent is that the court will limit the plaintiff’s recovery by particular defendant according to whether the damages are noneconomic or economic, and whether that defendant’s allocable percentage of causation exceeds 50%, pursuant to R.C. 2307.22.

Because the statute provides that the final determination of the amount(s) due is to be made by the court, no instructions for allocation of the award are provided.

1. **GENERAL.** The plaintiff claims that (*describe claim*). The defendant claims that (*describe form and substance of contributory fault and other affirmative defenses*).
2. **INTRODUCTION TO INTERROGATORIES.** OJI-CV 321.01.

## 3. INTERROGATORIES.

**COMMENT**

The interrogatories are designed for only one plaintiff. If there is more than one plaintiff, a separate set of interrogatories should be used for each plaintiff.

**(A) CLAIM(S).**

*(Use appropriate alternative[s])*

(1) WAS THERE A DEFECT IN THE DESIGN OF THE DEFENDANT'S PRODUCT?

*(or)*

(2) WAS THERE A DEFECT IN THE CONSTRUCTION OR MANUFACTURE OF THE DEFENDANT'S PRODUCT?

*(or)*

(3) WAS THERE A DEFECT IN THE PRODUCT CAUSED BY A FAILURE TO ADEQUATELY WARN OR INSTRUCT THE PLAINTIFF OF THE DANGERS OF THE PRODUCT?

*(or)*

(4) DID THE DEFENDANT'S PRODUCT FAIL TO CONFORM TO REPRESENTATIONS MADE BY THE MANUFACTURER?

*(or)*

(5) (For claims arising before 4/7/05) DID THE DEFENDANT NEGLIGENTLY (DESIGN) (CONSTRUCT OR MANUFACTURE) (FAIL TO WARN ABOUT THE RISKS OR HAZARDS ASSOCIATED WITH) THE PRODUCT?

**COMMENT**

S.B. 80 abrogated all common law product liability claims. R.C. 2307.71(B).

*(or)*

(6) (For claims arising before 4/7/05) DID THE DEFENDANT BREACH AN IMPLIED WARRANTY ABOUT THE PRODUCT?

**COMMENT**

The Committee believes that S.B. 80's abrogation of all common law product liability claims includes implied warranty in tort as established in *LaPuma v. Collinwood Concrete* (1996), 75 Ohio St.3d 64, R.C. 2307.71(B).

CIRCLE YOUR ANSWER IN  
INK

YES or NO



_____	_____
_____	_____
_____	_____
_____	_____

If the answer of six or more jurors to (A) is “yes,” move to Interrogatory (B).

If the answer of six or more jurors to (A) is “no,”

- do not answer the remaining Interrogatories, and
- sign the general verdict for the defendant, and
- report to the Court that you have completed your deliberations.

If six jurors cannot agree on an answer to Interrogatory (A), report this to the Court.

In answering the following Interrogatory (B) about whether the defendant’s conduct directly and proximately caused the plaintiff’s (injury) (damages), only those jurors who answered “yes” to Interrogatory (A) are qualified to participate in answering Interrogatory (B).

### COMMENT

Ohio follows the “same juror” rule. *O’Connell v. Chesapeake & Ohio RR. Co.*, 58 Ohio St.3d 226 (1991). The Committee believes that *O’Connell* establishes that only those jurors who find negligence may vote on proximate cause. *But see Dillon v. OhioHealth Corp.*, 10th Dist. Franklin Nos. 13AP-467 and 14AP-259, 2015-Ohio-1389, appeal not accepted, 144 Ohio St.3d 1407, 2015-Ohio-4947 (holding that “a juror who failed to find negligence was still able to determine proximate cause”); *see also Estate of Lawson v. Mercy Hosp. Fairfield*, 12th Dist. Butler No. CA2010-12-340, 2011-Ohio-4471 (holding that “standard of care and proximate cause of injury are not interdependent pursuant to the analysis provided in *O’Connell*, and therefore we do not invoke the ‘same juror’ rule herein”).

(B) DID THE DEFENDANT’S (DEFECT) (FAILURE TO CONFORM) (NEG-LIGENCE, IF APPLICABLE) (BREACH OF IMPLIED WARRANTY, IF APPLICABLE) PROXIMATELY CAUSE INJURY TO THE PLAINTIFF?

CIRCLE YOUR ANSWER IN INK	YES or NO
_____	_____
_____	_____
_____	_____
_____	_____

If the answer of six or more jurors to (B) is “yes,” move to Interrogatory (C).

If the answer of six or more jurors to (B) is “no,”

- do not answer the remaining Interrogatories, and
- sign the general verdict for the defendant, and

- report to the Court that you have completed your deliberations.

If six jurors cannot agree on an answer to Interrogatory (B), report this to the Court.

### COMMENT

For claims arising on and after 4/7/05, when the defendant is a supplier and negligence is asserted, pursuant to R.C. 2307.78(A)(1), the plaintiff's implied assumption of the risk, if any, is not a complete defense and should be treated as contributory negligence. In such cases use interrogatory (D) instead of interrogatory (C) and modify the directions after interrogatory (B).

(C) DID THE PLAINTIFF (EXPRESSLY) (IMPLIEDLY) ASSUME THE RISK OF INJURY, AND, IF SO, WAS THAT (EXPRESS) (IMPLIED) ASSUMPTION OF THE RISK A DIRECT AND PROXIMATE CAUSE OF THE PLAINTIFF'S INJURY?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer of six or more jurors to (C) is "yes,"

- do not answer the remaining Interrogatories, and
- sign the general verdict for the defendant, and
- report to the Court that you have completed your deliberations.

If the answer of six or more jurors to (C) is "no," move to Interrogatory (D).

If six jurors cannot agree on an answer to Interrogatory (C), report this to the Court.

In answering the following Interrogatory (D) about the percentages of negligence or other conduct that directly and proximately caused the plaintiff's (injury) (damages), only those jurors who answered "yes" to both interrogatory (A) and Interrogatory (B) are qualified to participate in answering Interrogatory (D).

(D) WAS THE PLAINTIFF NEGLIGENT, AND DID THAT NEGLIGENCE DIRECTLY AND PROXIMATELY CAUSE THE PLAINTIFF'S OWN (INJURY) (DAMAGES)?

CIRCLE YOUR ANSWER IN INK      YES or NO

_____	_____
_____	_____
_____	_____
_____	_____

If the answer to interrogatory (D) is "yes," proceed to interrogatory (E)(1).

If the answer to interrogatory (D) is "no," proceed to interrogatory (E)(2).



If six jurors cannot agree on an answer to Interrogatory (D), report this to the Court. In answering the following Interrogatory (E)(1) about the percentages of negligence or other conduct that directly and proximately caused the plaintiff's (injury) (damages), please observe the following:

- Only those jurors who answered "yes" to interrogatory (A) and to interrogatory (B) and to Interrogatory (D) are qualified to participate in answering Interrogatory (E)(1), and
- If less than six jurors are qualified to answer (E)(1), report this to the Court, and
- If six jurors who are qualified cannot agree on an answer to (E)(1), report this to the Court.

(E)(1) STATE THE PERCENTAGES OF NEGLIGENCE OF THE PLAINTIFF AND (*DESCRIBE TORTIOUS CONDUCT*) OF DEFENDANT(S) AND OTHER PERSON(S) THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF NEGLIGENCE ATTRIBUTABLE TO THE PLAINTIFF \_\_\_\_\_ %

PERCENTAGE OF (*DESCRIBE TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE FOLLOWING PERSONS OR PARTIES:

#### COMMENT

The judge must identify every potentially liable person.

(*INSERT NAME OF DEFENDANT OR OTHER PERSON*) .....  
\_\_\_\_\_ %

(*INSERT NAME OF DEFENDANT OR OTHER PERSON*) .....  
\_\_\_\_\_ %

These percentages must equal the total of ..... 100%

_____	_____
_____	_____
_____	_____
_____	_____

If the percentage attributable to the plaintiff is 50% or less,

- move to Interrogatory (F), and all of the jurors shall participate in the deliberations, and
- sign the general verdict for the plaintiff.

If the percentage attributable to the plaintiff is more than 50%,

- do not answer the remaining Interrogatories, and

- sign the general verdict for the defendant(s), and
- report to the court that you have completed your deliberations.

In answering the following Interrogatory (E)(2) about the percentages of negligence or other conduct that directly and proximately caused the plaintiff's (injury) (damages), please observe the following:

- Only those jurors who answered "yes" to interrogatory (A) and to interrogatory (B) and "no" to Interrogatory (D) are qualified to participate in answering Interrogatory (E)(2), and
- If less than six jurors are qualified to answer (E)(2), report this to the Court, and
- If six jurors who are qualified cannot agree on an answer to (E)(2), report this to the Court.

(E)(2) STATE THE PERCENTAGES OF (NEGLIGENCE) (*DESCRIBE OTHER TORTIOUS CONDUCT*) OF DEFENDANT(S) OR OTHER PERSON(S)) THAT DIRECTLY AND PROXIMATELY CAUSED THE PLAINTIFF'S (INJURY) (DAMAGES):

PERCENTAGE OF (*DESCRIBE TORTIOUS CONDUCT*) ATTRIBUTABLE TO THE FOLLOWING PERSONS OR PARTIES:

#### COMMENT

The judge must identify every potentially liable person.

(*INSERT NAME OF DEFENDANT OR OTHER PERSON*) .....  
 \_\_\_\_\_%

(*INSERT NAME OF DEFENDANT OR OTHER PERSON*) .....  
 \_\_\_\_\_%

These percentages must equal the total of ..... 100%

_____	_____
_____	_____
_____	_____
_____	_____

In answering the following Interrogatory (F) about the compensatory damages of the plaintiff, please observe the following:

- All jurors are qualified to participate in answering Interrogatory (F).

(F) PLEASE STATE THE FOLLOWING:

(1) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS ECONOMIC LOSS OF THE PLAINTIFF.

\_\_\_\_\_%




(2) THE PORTION OF THE COMPENSATORY DAMAGES THAT REPRESENTS NONECONOMIC LOSS OF THE PLAINTIFF.

\_\_\_\_\_%


(3) THE TOTAL AMOUNT OF THE COMPENSATORY DAMAGES SUSTAINED BY THE PLAINTIFF (TOTAL OF "ECONOMIC" AND "NONECONOMIC" LOSS).

\_\_\_\_\_%


### COMMENT

S.B. 120 requires that the jury distinguish between economic and noneconomic damages. The distinction between economic and noneconomic damages is significant, because different percentages of each may be recoverable against particular defendants, depending on the allocation of liability. R.C. 2307.22, 2307.23.

*(Text continued on page 447)*





# Chapter CV 609

## EMINENT DOMAIN

CV 609.01	Preliminary instructions
CV 609.03	View of property
CV 609.05	Compensation
CV 609.07	Issues concerning potential use
CV 609.09	Damages
CV 609.11	Structures removed prior to trial
CV 609.13	Easements
CV 609.15	Fixtures
CV 609.17	Natural assets
CV 609.19	Special use property
CV 609.21	Conclusion
CV 609.23	Verdict [Rev. 11/7/20]

### COMMENT

The jurors should be informed as early as possible of their function and the definition of terms. The following preliminary instructions should be given during voir dire but must be included in the general charge. Civ.R. 51.

All appropriation proceedings are governed by R.C. Chapter 163. *Weir v. Wiseman* (1982), 2 Ohio St.3d 92, 443 N.E.2d 152.

The civil rules apply in appropriation cases “except to the extent that such rules would, by their nature, be clearly inapplicable.” Civ. R. 1(C); *Cleveland Elec. Illuminating Co. v. Astorhurst Land Co.* (1985), 18 Ohio St.3d 268, 480 N.E.2d 794, and *Weir v. Wiseman, supra*.

Section 5, Article XIII, Ohio Constitution and Civ.R. 38(B) provide for a jury of twelve for an appropriation of right-of-way by a corporation.

An appropriation proceeding is essentially one in rem. *Sowers v. Schaeffer* (1951), 155 Ohio St. 454, 44 O.O. 419, 99 N.E.2d 313.

The property value is considered as a whole and is determined in one proceeding without regard to fractional interests. *Pokorny v. Local No. 310* (1974), 38 Ohio St.2d 177, 67 O.O.2d 195, 311 N.E.2d 866; *Ohio Sand & Gravel Co. v. Masheter* (1964), 176 Ohio St. 327, 27 O.O.2d 272, 199 N.E.2d 573.

The distribution of proceeds among the mortgagees, lessees, remaindermen and owners of sub-surface rights is not for jury determination but is governed by R.C. 163.18. *Pokorny, supra*.

These instructions do not address “inverse condemnation.”

**CV 609.01 Preliminary instructions**

1. **GENERAL.** This is an appropriation action brought by (*name appropriating body*) to acquire property for public purposes from (*land owners*). The property to be taken is (*describe the property*). This may be referred to as “the take.” (*If there is a severance explain or describe the residue*). Our laws give (*name appropriating body*) the right to appropriate this property subject to the requirement that compensation for such take (and any damages to a residue) shall be assessed by a jury.
2. The jury acts as an assessing body in determining the amount of compensation and the amount of any damages. As to the amounts of compensation of property and any damages, there is no burden of proof as in other civil cases.

**COMMENT**

The owners may have a burden of proof as to the existence of underlying minerals. *Tennessee Gas Transm. Co. v. Wolfe* (1953), 159 Ohio St. 391, 50 O.O. 350, 112 N.E.2d 376; the existence of a residue, *Lorain v. Gel-Pak, Inc.* (1984), 20 Ohio App.3d 378, 486 N.E.2d 836; *Deercreek Local Bd. of Edn. v. Payne* (1949), 86 Ohio App. 319, 41 O.O. 368, 88 N.E.2d 226.

When an answer is filed pursuant to section 163.08 of the Revised Code and any of the matters relating to the right to make the appropriation, the inability of the parties to agree, or the necessity for the appropriation are specifically denied in the manner provided in such section, the court shall set a day, not less than five or more than fifteen days from the date the answer was filed, to hear such questions. Upon such questions, the burden of proof is upon the owner. R.C. 163.09(B).

3. **COMPENSATION.** Compensation is payment of the fair market value of the property taken.
4. **DAMAGES.** Damages are the loss in value of the residue of the property because of its severance from the property taken (because of the imposition of the easement).
5. **DATE OF TAKE.** Compensation (and damages to residue, if any) shall be determined as of the . . . . . day of . . . . ., which is referred to as the “date of take.”

**COMMENT**

This date must be fixed by the Court prior to trial. The date of take is date of trial or an earlier date when the appropriator took possession of the property, began condemnation proceedings or actions of the appropriator depreciated the

(Text continued on page 659)



For suggested methods of valuation of such properties see 4 Nichols, Eminent Domain, (Supp. 1989) Section 12 C.01 [1-5].

### **CV 609.21 Conclusion**

1. The evidence has provided you with the factors for you to arrive at a fair verdict. The weight you assign to the various parts of the evidence is for you to decide in arriving at a fair verdict.
2. The authority you have to award compensation (and damages) must be exercised with sincere and honest judgment, without bias or prejudice and in accordance with the evidence and the law as it has been explained to you.
3. VERDICTS. OJI-CV 609.23.
4. QUOTIENT VERDICT. OJI-CV 315.41.
5. CLOSING. OJI-CV Chapter 317.

### **CV 609.23 Verdict [Rev. 11/7/20]**

#### **COMMENT**

*See* OJI-CV 323.05.

The verdict used depends on whether there is a temporary easement or damages to the residue in addition to the property taken. It is error to have the jury award separate compensation for land and improvements, structures and fixtures. *Masheter v. Boehm*, 37 Ohio St.2d 68 (1974).

*(Text continued on page 669)*





# Chapter CV 633

## WILLS

CV 633.01	Validity of will or codicil [Rev. 11/7/20]
CV 633.03	Sound mind and memory [Rev. 11/7/20]
CV 633.05	Under (undue) (improper) influence defined [Rev. 11/7/20]
CV 633.07	Fraud [Rev. 11/7/20]
CV 633.09	Additional considerations regarding bequests [Rev. 11/7/20]
CV 633.11	Revocation [Rev. 11/7/20]
CV 633.13	Verdict [Rev. 11/7/20]
CV 633.01	Validity of will or codicil [Rev. 11/7/20]

### COMMENT

R.C. 2107.71 creates a civil action to contest the validity of a will or codicil. These instructions contain two proof of claim subsections, 2(A) (greater weight) and 2(B) (clear and convincing), based on the nature of the claim.

1. GENERAL. The plaintiff(s) claims that *(insert name of person making [will] [codicil])*'s (will) (codicil) is invalid.

2. PROOF OF CLAIM.

*(Use appropriate alternative[s])*

(A) INVALIDITY (GREATER WEIGHT). Before you can find for the plaintiff(s), you must find by the greater weight of the evidence that

*(Use appropriate alternative[s])*

(1) the person making the (will) (codicil) was not of sound mind and memory when the (will) (codicil) was made;

*(or)*

(2) the person making the (will) (codicil) was not 18 years of age;

*(or)*

(3) the (will) (codicil) was forged;

*(or)*

(4) the (will) (codicil) was not properly (made) (signed);

**COMMENT**

Generally there will be no dispute that the testator was 18 years of age or that the will was properly executed. There may be a dispute as to whether the testator's or witnesses' names were forged. If forgery becomes a jury question, the judge will need to draft appropriate instructions. *See* R.C. 2913.01; OJI-CR 513.31(A) § 7.

(or)

(5) the (will) (codicil) was revoked.

(B) **INVALIDITY (CLEAR AND CONVINCING).** Before you can find for the plaintiff(s), you must find by clear and convincing evidence that

*(Use appropriate alternative[s])*

(1) the party making the (will) (codicil) was under (restraint) ([undue] [improper] influence);

(or)

**COMMENT**

Drawn from *Young v. Kaufman*, 8th Dist. Cuyahoga Nos. 104990 and 105359, 2017-Ohio-9015, *Black v. Watson*, 8th Dist. Cuyahoga No. 103600, 2016-Ohio-1470, *Fox v. Stockmaster*, 3rd Dist. Seneca Nos. 13-01-34 and 13-01-35, 2002-Ohio-2824 (“generally, undue influence must be proven by clear and convincing evidence which will produce in the mind of the trier of fact a firm belief or conviction as to the facts sought to be established”).

(2) the (will) (codicil) was the product of fraud.

**COMMENT**

The degree of proof to set aside a document for fraud is clear and convincing evidence. *Cross v. Ledford*, 161 Ohio St. 469 (1954). *See* OJI-CV 303.07.

3. **WILL.** “Will” means a written instrument made by a person eighteen years of age or older who is of sound mind and memory and not under restraint in order to dispose of his/her property after his/her death.

**COMMENT**

Drawn from R.C. 2107.02.

4. **CODICIL.** A “codicil” means a written instrument made by a person eighteen years of age or older who is of sound mind and memory and not under restraint that is a post-script to a will and must be construed together with the will.

**COMMENT**

Drawn from *Phipps v. Hope* (1866), 16 Ohio St. 586 and *Clark v. Carpenter*



(1921), 14 Ohio App. 278.

5. **PROPERLY (EXECUTED) (SIGNED) (ADDITIONAL).** “Properly (executed) (signed)” means a (will) (codicil) must be

(A) in writing; and

(A) signed at the end by (the person making it) (some person at the express direction of the party making it and in his/her conscious presence); and

(B) signed by at least two competent witnesses in the conscious presence of the party making the (will) (codicil) who (saw the party making the [will] [codicil] sign it) (heard the person making the [will] [codicil] acknowledge his/her signature); and

#### COMMENT

Drawn from R.C. 2107.03.

6. **COMPETENT WITNESS.** “Competent witness” means a person who is capable of receiving accurate impressions of the facts and relating them truthfully.

#### COMMENT

Drawn from Evid.R. 601; *State v. Marshall*, 2d Dist. Montgomery No. 23729, 2010-Ohio-5160.

Effective July 23, 2002, a witness to a will must be at least eighteen years of age. R.C. 2107.06. If a devise or bequest is made to a person who is one of only two witnesses to a will, the devise or bequest is void. R.C. 2107.15.

7. **CONSCIOUS PRESENCE.** “Conscious presence” means within the range of any of the senses of the person making the will, excluding the sense of sight or sound that is sensed by telephonic, electronic, or other distant communication.

#### COMMENT

Drawn from R.C. 2107.03; *see Whitacre v. Crowe*, 9th Dist. Medina No. 11 CA 0019-M, 2012-Ohio-2981.

8. **PROBATE (ADDITIONAL).** “Probate” means a court procedure by which a (will) (codicil) is proven to be validly or invalidly written and signed as required by law. The parties agree that the (will) (codicil) was written and signed as required by law. Even though a (will) (codicil) is admitted to probate, it does not mean it validly disposes of the property of the party making the (will) (codicil) according to his/her wishes, but it is evidence of validity.

#### COMMENT

Drawn from *Jackson v. Estate of Henderson*, 8th Dist. Cuyahoga No. 93231,

2010-Ohio-3084. R.C. 2107.74.

9. PREPONDERANCE. OJI-CV 303.05.

10. CLEAR AND CONVINCING. OJI-CV 303.07.

11. CONCLUSION FOR PLAINTIFF. If you find by the greater weight of the evidence that the plaintiff proved his/her claim that the (will) (codicil) was not properly executed, then you will enter a verdict for the plaintiff.

12. CONCLUSION FOR DEFENDANT. If you find that the plaintiff failed to prove his/her claim by the greater weight of the evidence that the (will) (codicil) was not properly executed, then you will enter a verdict for the defendant.

#### COMMENT

If the plaintiff presents alternate or multiple theories regarding the validity of the will/codicil, the court should combine conclusions contained within this chapter.

#### CV 633.03 Sound mind and memory [Rev. 11/7/20]

1. GENERAL. In determining the soundness of the mind and memory of the person making a (will) (codicil), the law does not undertake to determine the level of a person's intelligence nor to define the exact quality of mind and memory that a person making a (will) (codicil) must possess at the time a (will) (codicil) is made.

2. ELEMENTS. To have sufficient mental capacity to make a (will) (codicil), a person, at the time that he/she signs a (will) (codicil), must

(A) understand that he/she is making a (will) (codicil) to dispose of his/her property after his/her death; and

(B) understand generally the nature and extent of his/her property; and

(C) have in his/her mind the names and identities of those persons who are his/her relatives, next-of-kin, or the natural objects of his/her (bounty) (generosity) and understand his/her relationship to them.

#### COMMENT

Drawn from *Niemes v. Niemes*, 97 Ohio St. 145 (1917).

3. CONCLUSION FOR PLAINTIFF. If you find by the greater weight of the evidence that the plaintiff proved his/her claim that the person making the (will) (codicil) was not of sound mind and memory at the time of the (making) (signing) of the (will) (codicil), then you will enter a verdict for the plaintiff.

4. CONCLUSION FOR DEFENDANT. If you find that the plaintiff failed to prove his/her claim by the greater weight of the evidence that the person making the (will) (codicil) was not of sound mind and memory at the time of the (making) (signing) of the (will) (codicil), then you will enter a verdict for the defendant.



**COMMENT**

If the plaintiff presents alternate or multiple theories regarding the validity of the will/codicil, the court should combine conclusions contained within this chapter.

**CV 633.05 Under (undue) (improper) influence defined [Rev. 11/7/20]**

1. **GENERAL.** The plaintiff claims that the person making the (will) (codicil) was under (undue) (improper) influence at the time that he/she signed the (will) (codicil).
2. **PROOF OF CLAIM.** Before you can find for the plaintiff, you must find by the greater weight of the evidence that

(A) (*insert name of person making will/codicil*) was a person who was or could have been (unduly) (improperly) influenced due to his/her (advanced age) (physical infirmities) (mental condition) (fear) (*describe other reason*) to yield to the desire or intent of another; and

(B) the opportunity existed for a person to exert (undue) (improper) influence on (*insert name of person making will/codicil*); and

(C) (undue) (improper) influence was exerted or attempted on (*insert name of person making will/codicil*); and

(D) (*insert name of person making will/codicil*) made a (will) (codicil) with (provisions) (gifts) (bequests) showing the effect of such (undue) (improper) influence on him/her.

**COMMENT**

Drawn from *West v. Henry*, 173 Ohio St. 498 (1962).

3. **(UNDUE) (IMPROPER) INFLUENCE.** (“Undue influence”) (“Improper influence”) sufficient to invalidate a (will) (codicil) means that which substitutes the plans or desires of another for those of the person making the (will) (codicil). The influence must be such as to control the mind of the person making the (will) (codicil) to overcome his/her power of resistance and to result in his/her making a distribution of property that he/she would not have made if he/she were left to act freely and according to his/her own plans and desires.

**COMMENT**

Drawn from *Krischbaum v. Dillon*, 58 Ohio St.3d 58 (1991).

4. **GENERAL INFLUENCE.** “General influence,” however strong or compelling, is not “(undue) (improper) influence” unless it is brought to bear directly upon the act of making the (will) (codicil) and imposes another person’s plans or desires upon the person making the (will) (codicil). If the (will) (codicil), as finally executed, expresses the free and voluntary plans and desires of the person making the (will) (codicil), the

(will) (codicil) is valid regardless of the exercise of influence.

#### COMMENT

Drawn from *West v. Henry*, 173 Ohio St. 498 (1962).

5. CONFIDENTIAL OR FIDUCIARY RELATIONSHIP: PRESUMPTION (ADDITIONAL). A person in a confidential or fiduciary relationship may have more opportunity to exert (undue) (improper) influence than a mere acquaintance. A (will) (codicil) is therefore looked upon with some suspicion that (undue) (improper) influence may have been brought to bear on the person making the (will) (codicil) if a confidential or fiduciary relationship exists. If you find that a confidential or fiduciary relationship existed between the person making the (will) (codicil) and the beneficiary, the defendant must prove by the greater weight of the evidence that his/her conduct was free of (undue) (improper) influence and the person making the (will) (codicil) acted voluntarily and according to his/her own plans and desires. However, the burden of proof remains on the plaintiff(s) to prove (undue) (improper) influence by clear and convincing evidence.

#### COMMENT

Drawn from *Black v. Watson*, 8th Dist. Cuyahoga No. 103-600, 2016-Ohio-1470 (discretionary appeal not allowed); *Diamond v. Creager, et al.*, 2nd Dist. Montgomery No. 18819, 2002-Ohio-916.

(A) CONFIDENTIAL RELATIONSHIP. A “confidential relationship” exists whenever trust and confidence is placed in the integrity and (fidelity) (loyalty) of another. A “confidential relationship” can be moral, social, domestic, or merely personal in nature.

#### COMMENT

Drawn from *Diamond v. Creager, et al.*, 2nd Dist. Montgomery No. 18819, 2002-Ohio-916; *Thorp v. Cross*, 11th Dist. Portage No. 97-P-0079 (Oct. 16, 1998).

(B) FIDUCIARY RELATIONSHIP. A “fiduciary relationship” is a relationship in which special confidence and trust is placed in the integrity and fidelity of another and there is a resulting position of superiority or influence, acquired by virtue of this special trust. A “fiduciary relationship” may be created out of an informal relationship, but this is done only when both parties understand that a special trust or confidence has been established. A “fiduciary relationship” may also exist when there is some formal legal relationship such as one created by a power of attorney.

#### COMMENT

Drawn from *Ed Schory & Sons, Inc. v. Francis*, 75 Ohio St.3d 433, 1996-Ohio-194; *Umbaugh Pole Bldg. Co. v. Scott*, 58 Ohio St.2d 282 (1979); *Fox v. Stockmaster*, 3rd Dist. Seneca Nos. 13-01-34 and 13-01-35, 2002-Ohio-2824.



6. CLEAR AND CONVINCING. OJI-CV 303.07.

7. CONCLUSION FOR PLAINTIFF. If you find by clear and convincing evidence that the plaintiff proved his/her claim that (undue) (improper) influence was exerted by or on behalf of the defendant on the person making the (will) (codicil) at the time of the (making) (signing) of the (will) (codicil), then you will enter a verdict for the plaintiff.

8. CONCLUSION FOR DEFENDANT.

If you find that the plaintiff failed to prove his/her claim by clear and convincing evidence that (undue) (improper) influence was exerted on the person making the (will) (codicil) at the time of the (making) (signing) of the (will) (codicil), then you will enter a verdict for the defendant.

**COMMENT**

If the plaintiff presents alternate or multiple theories regarding the validity of the will/codicil, the court should combine conclusions contained within this chapter.

**CV 633.07 Fraud [Rev. 11/7/20]**

**COMMENT**

If fraud becomes a jury question, the judge will need to draft appropriate instructions. *See* OJI-CV Chapter 449.

The degree of proof to set aside a document for fraud is clear and convincing evidence. *Cross v. Ledford*, 161 Ohio St. 469 (1954). *See* OJI-CV 303.07.

**CV 633.09 Additional considerations regarding bequests [Rev. 11/7/20]**

1. GENERAL. The fact that (*insert name of person making [will] [codicil]*) makes a (will) (codicil) that disposes of his/her property in an unnatural manner, or unjustly, or not equally and at variance with earlier statements by (*insert name of person making [will] [codicil]*) concerning his/her relatives or next-of-kin, or the natural objects of his/her (bounty) (generosity), does not invalidate his/her (will) (codicil) unless the (contestants) (plaintiff[s]) prove by the greater weight of the evidence that (*insert name of person making [will] [codicil]*) was not of sound mind and memory or that undue influence was actually exercised on (*insert name of person making [will] [codicil]*) at or prior to the time of the making of the (will) (codicil), and that such (lack of sound mind and memory) (undue influence) was in operation at the time of the (making) (signing) of the (will) (codicil) and that the (lack of sound mind and memory resulted in a) (undue influence was used for the purpose of obtaining, producing or coercing a) will or codicil in favor of particular individuals.

2. CONSIDERATIONS (OPTIONAL). You have the right to consider evidence tending to show that the (will) (codicil) was just or unjust, reasonable or unreasonable.

natural or unnatural; the value and nature of (*insert name of person making [will] [codicil]*)'s estate; financial condition of those who might naturally expect to be beneficiaries at the time the (will) (codicil) was made, and any other factors that you find from the evidence, in determining whether, at the time of the execution of the (will) (codicil), (*insert name of person making [will] [codicil]*) was (of sound mind and memory sufficient to legally make a [(will) (codicil)] (subject to undue influence).

*(Text continued on page 753)*



# INDEX

[References are to civil (CV) and criminal (CR) instruction numbers.]

## A

### ABDUCTION

Generally . . . CR 505.02

### ABORTION OFFENSES

Eighteen years of age, performance of abortion on woman under . . . CR 519.12(B)

Manslaughter, abortion . . . CR 519.13(A); CR 519.13(B)

Parent or guardian notification, failure to provide . . . CR 519.12(B)

Report falsification . . . CR 519.171

Trafficking . . . CR 519.14

#### Unlawful abortion

Generally . . . CR 519.12(A)

Parent or guardian notification, failure to provide . . . CR 519.12(B)

Partial birth . . . CR 519.151

#### Viability

Termination or attempted termination of pregnancy after . . . CR 519.17

Testing for, failure to perform . . . CR 519.18

Woman under 18 . . . CR 519.12(B); CR 519.121

### ABUSE AND NEGLECT

Battered person syndrome . . . CR 417.43

Child abuse (See CHILD ABUSE AND NEGLECT)

#### Patient abuse and neglect

Generally . . . CR 503.34

False complaint, filing of . . . CR 503.35

### ABUSE OF PROCESS

Generally . . . CV 435.01

Defined . . . CV 435.01

### ACCELERANT

Use of accelerant to initiate or increase growth or spread of fire . . . CR 541.1425

### ACCOMPLICES

Generally . . . CR 523.03

Testimony . . . CR 409.17

### ACCORD AND SATISFACTION

Affirmative defense in contract claim, as . . . CV 501.25

### ADDITIONAL ELEMENTS

Finding of; concluding instructions . . . CR 425.25

### ADMONITIONS TO JURY

Generally . . . CV 301.07

Sample instructions . . . CR 205.03; CV 205.03

### ADULTERY

Proof of . . . CV 701.05

### ADVERSE POSSESSION

Generally . . . CV 601.03

### ADVISORY INSTRUCTIONS

Generally . . . CR 101.57; CV 101.57

### ADVISORY JURIES

Generally . . . CR 101.37; CV 101.37

### AGENCY LIABILITY

Contracts . . . CV 423.01

Independent contractors . . . CV 423.07

Issues regarding negligence, presentation of (See NEGLIGENCE, subhead: Issues, presentation of)

Joint ventures . . . CV 423.05

Medical negligence by agents or employees of physicians . . . CV 417.11

Surety's liability on bond of agent . . . CV 513.01

Torts . . . CV 423.03

### AGGRAVATING CIRCUMSTANCES

Damages, acceleration or aggravation of condition . . . CV 315.15

Specification in concluding instructions . . . CR 425.27

### AID OR ABET

Escape (See ESCAPE, subhead: Aiding of)

Identity fraud . . . CR 513.49

### AIRCRAFT-AIRPORT OPERATIONS

Endangering . . . CR 509.08

### ALCOHOL OFFENSES

Firearm possession in liquor permit premises, illegal . . . CR 523.121

Insurance policy intoxication exclusion . . . CV 709.39

Intoxication (See INTOXICATION)

Liability for service of intoxicants (See INTOXICATIONS, subhead: Liability for service of)

#### Traffic offenses

Insurance policy intoxication exclusion . . . CV 709.39

Operating under influence of alcohol or drugs

Generally . . . CR 711.19

Felony OVI specification . . . CR 541.1413

Physical control of vehicle while under influence . . . CR 711.194

Prohibited alcohol or drug concentration, operating with . . . CR 711.19(A)(1)(b)-(j)

Refusal to submit to chemical test . . . CR 711.19(A)(2)

Physical control of vehicle while under influence . . . CR 711.194

Prohibited alcohol concentration, operating with Generally . . . CR 711.19(A); CR 711.19(A)(1)(b)-(j)

Defendant under 21 . . . CR 711.19(B)

Wrongful entrustment of motor vehicle . . . CR 711.203

#### Watercraft and waterways violations

Defendant under 21 years of age operating vessel with prohibited alcohol concentration . . . CR 547.11(B)

Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)

Prohibited alcohol or drug concentration, operating vessel with . . . CR 547.11(A)(2)-(6)

[References are to civil (CV) and criminal (CR) instruction numbers.]

**ALIBI**

Defense of . . . CR 421.03

**ALTERNATIVE COUNTS**

Concluding instructions . . . CR 425.13

**ANHYDROUS AMMONIA**

Theft . . . CR 513.02

**ANIMALS**

Bestiality . . . CR 559.21

Companion animals, cruelty to . . . CR 559.131

Cruelty to companion animals . . . CR 559.131

Drugs for, trafficking in . . . CR 525.09(B)

Escape of animals, duty to report . . . CR 527.21

Exotic animals, crimes related to . . . CR 551.13

Fighting

Generally . . . CR 559.15

Dog fighting . . . CR 559.03

Liability for

Affirmative defenses . . . CV 409.03

Dog owners . . . CV 409.01

Domestic animals, owners of . . . CV 409.07

Wild animals, owners of . . . CV 409.05

Police dog or horse

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Service dog, theft of . . . CR 513.02

Wildlife violations (See WILDLIFE VIOLATIONS)

**APPEAL ON INSTRUCTIONS**

Generally . . . CR 101.15; CV 101.15

Error, based on . . . CR 101.17; CV 101.17

Prejudice, based on . . . CR 101.17; CV 101.17

**ARREST**

False arrest . . . CV 441.01

Impersonation of officer during . . . CR 521.51(C)

Resisting . . . CR 521.33

**ARSON**

Generally . . . CR 509.03

Aggravated . . . CR 509.02

Insurance claims . . . CV 709.11

Registry of offenders . . . CR 509.15

**ASSAULT**

Aggravated

Generally . . . CR 503.12

Vehicular assault . . . CR 503.08

Civil assault . . . CV 429.01

Criminal assault . . . CR 503.13

Felonious . . . CR 503.11(A); CR 503.11(B)

Negligent . . . CR 503.14

Police dog or horse, of . . . CR 521.321

Vehicular . . . CR 503.08

**ATTEMPT TO COMMIT CRIME**

Generally . . . CR 523.02

**ATTORNEYS**

Fees in damage claims . . . CV 315.39

Intimidation of . . . CR 521.04

Professional negligence generally (See PROFESSIONAL NEGLIGENCE)

Self-representation by defendant . . . CR 401.03

**AUDIOTAPES**

Evidence, as . . . CR 409.29

**AUTOMOBILES AND OTHER MOTOR VEHICLES**

Accident, leaving scene of

Generally . . . CR 749.02

Damage to property of others, involving . . . CR 749.03

Exchange of identity and vehicle registration, duty to provide . . . CR 749.02

Nonpublic road accident . . . CR 749.021

Alcohol offenses

Traffic offenses (See ALCOHOL OFFENSES, subhead: Traffic offenses)

Watercraft and waterways violations (See ALCOHOL OFFENSES, subhead: Watercraft and waterways violations)

Assault, vehicular . . . CR 503.08

Certificate of title, theft value . . . CR 425.23

Damages for damage or loss . . . CV 315.19

Driver's license offenses (See DRIVER'S LICENSE OFFENSES)

Firearms in, improper handling of . . . CR 523.16

Governmental liability for negligent operation of motor vehicle . . . CV 425.01

Homicide, vehicular (See VEHICULAR HOMICIDE)

Illuminating devices, failure to use . . . CV 411.71

Insurance policy intoxication exclusion . . . CV 709.39

Leaving scene of accident (See subhead: Accident, leaving scene of)

Lemon Law . . . CV 529.01

License offenses (See DRIVER'S LICENSE OFFENSES)

License plate or placard, theft value . . . CR 425.23

Lights, failure to display . . . CV 411.71

Livery, defrauding of . . . CR 513.41

Manufacturer's or importer's certificate form, theft value . . . CR 425.23

Minor, operation by . . . CV 407.09

Negligence involving (See NEGLIGENCE, subhead: Automobile negligence)

Nitrous oxide, possession in motor vehicle of . . . CR 525.33

Nonconforming motor vehicles (Lemon Law) . . . CV 529.01

Non-traffic offenses

Illuminating devices, failure to use . . . CV 411.71

Lights, failure to display . . . CV 411.71

Unsafe vehicle, operation of . . . CV 411.69

Plate or placard, theft value . . . CR 425.23

Reasonable control of vehicle . . . CV 411.15

Signal for stop, failure to obey . . . CR 749.01

Theft . . . CR 513.02

Title, theft value . . . CR 425.23

Traffic offenses

Generally (See TRAFFIC OFFENSES)

Alcohol-related (See ALCOHOL OFFENSES, subhead: Traffic offenses)

Non-traffic (See subhead: Non-traffic offenses)

Unauthorized use . . . CR 513.03

Unsafe vehicle, operation of . . . CV 411.69



[References are to civil (CV) and criminal (CR) instruction numbers.]

## **AUTOMOBILES AND OTHER MOTOR VEHICLES—Cont.**

- Vehicle identification numbers, tampering with
  - Generally . . . CR 749.62(A)
  - Counterfeit VINs . . . CR 749.62(C)
  - Owner's VIN . . . CR 749.62(B)
  - Possessing or dealing in tampered vehicles . . . CR 749.62(D)
- Vehicular assault . . . CR 503.08
- Vehicular homicide (See **VEHICULAR HOMICIDE**)
- Willful or wanton disregard of safety of persons or property, operation in . . . CV 411.13
- Windshield sticker, theft value . . . CR 425.23
- Wrongful entrustment of motor vehicle . . . CR 711.203

## **B**

### **BAD CHECKS**

- Passing of . . . CR 513.11

### **BAIL**

- Bailments (See **BAILMENTS**)
- Bond agent practices, illegal
  - Misrepresentation . . . CR 527.27(B)
  - Reckless apprehension . . . CR 527.27(A)

### **BAILMENTS**

- Agreement, by
  - Generally . . . CV 629.01
  - Prima facie case . . . CV 629.03
- Care, duty of . . . CV 629.01
- Defined . . . CV 629.01
- Return, duty of . . . CV 629.01

### **BATTERED PERSON SYNDROME**

- Defined . . . CR 417.43

### **BATTERY**

- Generally . . . CV 429.03
- Sexual . . . CR 507.03

### **BIGAMY**

- Generally . . . CR 519.01

### **BINGO GAMES (See **GAMBLING**)**

### **BIOLOGICAL WEAPONS**

- Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28
- Possession . . . CR 509.26
- Use, knowing or reckless . . . CR 509.27

### **BLACKOUT OR COMA (See **COMA OR BLACK-OUT**)**

### **BLOOD SUPPLY**

- Contaminated blood, selling or donation of . . . CR 527.13

### **BOATS (See **VESSELS**)**

### **BODY ARMOR**

- Specifications
  - Generally . . . CR 541.1411

### **BODY ARMOR—Cont.**

- Specifications—Cont.
  - Wearing of during commission of felony; concluding instructions . . . CR 425.19
- Wearing of during commission of felony; specification in concluding instructions . . . CR 425.19

### **BONDS**

- Bail bonds (See **BAIL**)
- Sureties (See **SURETIES**)

### **BREAKING AND ENTERING**

- Land . . . CR 511.13(B)
- Structure . . . CR 511.13(A)

### **BRIBERY**

- Generally . . . CR 521.02
- Solicitation by public official, improper (See **SOLICITATION**, subhead: Compensation by public official, improper)

### **BROKERS**

- Abandonment by . . . CV 605.07
- Both parties, effect of acting for . . . CV 605.03
- Commission, recovery of . . . CV 605.01
- Damages by . . . CV 605.09
- Duty to seller, broker's . . . CV 605.09
- Failure of transaction . . . CV 605.05

### **BURDEN OF PROOF**

- Generally . . . CR 405.05; CV 303.03
- Adultery . . . CV 701.05
- Affirmative defenses . . . CR 417.27
- Final instructions, sample . . . CR 207.11; CV 207.03
- Insanity defense . . . CR 421.29
- Insurance (See **INSURANCE**)
- Negligence defense (See **NEGLIGENCE**, subhead: Burden of proof of defenses)
- Paternity claim

- Defendant as presumed father . . . CV 705.05
- Non-defendant as presumed father . . . CV 705.03

### **RICO offenses**

- Acquiring or maintaining interest in enterprise or real property . . . CV 445.09
- Conducting or participating in affairs of enterprise . . . CV 445.03
- Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.21
- Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.15
- Support claim, in . . . CV 701.03
- Will contests . . . CV 633.01

### **BURGLARY**

- Aggravated . . . CR 511.11
- Post-9/30/2011, offenses committed . . . CR 511.12
- Pre-9/30/2011, offenses committed . . . CR 511.12
- Trespass in habitation when person present or likely to be present . . . CR 511.12(B)

### **BURIAL SITES**

- Vandalism . . . CR 509.05(D)

[References are to civil (CV) and criminal (CR) instruction numbers.]

## BURN INJURIES

Failure to report . . . CR 521.22(E)

## BUSINESS RELATIONSHIPS

Tortious interference with . . . CV 453.01

# C

## CABARET, ADULT

Employee, illegal acts of . . . CR 507.53(C)

Illegally operating . . . CR 507.40(B)

Owner or operator, illegal acts of . . . CR 507.53(B)

Permit, operation without . . . CR 507.53(A)

## CABLE TELEVISION SERVICES

Theft of . . . CR 513.02

## CABLE THEFT

Unauthorized device, possession or sale of . . . CR 513.041

Unauthorized use of cable, failure to report . . . CR 521.22(A)

## CALUMNY

Defined . . . CR 521.04

## CAPACITY

Will, making of . . . CV 633.03

## CASINOS

Gambling-related crimes . . . CR 515.15

## CAUSATION

Generally . . . CR 417.23

Intervening causes . . . CR 417.25

Natural consequences, responsibility for . . . CR 417.23

Other causes as defense . . . CR 417.25

Proximate cause

Negligent acts (See NEGLIGENCE)

Sample final instructions . . . CV 207.19

RICO offenses

Acquiring or maintaining interest in enterprise or real property . . . CV 445.13

Conducting or participating in affairs of enterprise . . . CV 445.07

Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25

Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19

## CAUTIONARY INSTRUCTIONS

Generally . . . CR 101.57; CV 101.57

## CEMETERIES

Vandalism . . . CR 509.05(C)

## CHECKS

Bad checks, passing of . . . CR 513.11

Theft, value . . . CR 425.23

## CHEMICAL TESTS

Operating under influence of alcohol or drugs with refusal to submit to . . . CR 711.19(A)(2)

## CHEMICAL WEAPONS

Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

## CHILD ABUSE AND NEGLECT

Failure of person acting in official or professional capacity to report known or suspected

Generally . . . CV 407.25

Cleric or church leader . . . CV 407.27

False report, making of . . . CR 521.14

Parental education neglect . . . CR 519.222

Permitting . . . CR 503.15

Sexual abuse . . . CR 519.22

## CHILDREN (See also MINORS)

Abortion performed on woman under 18, unlawful . . . CR 519.12(B); CR 519.121

Abuse or neglect (See CHILD ABUSE AND NEGLECT)

Administrator, action against parents by . . . CV 407.17

Care provider

Death or serious injury of child, failure to disclose . . . CR 519.225

Misrepresentation by . . . CR 519.224

Cigarettes, illegal distribution of . . . CR 527.02(B)(1) *et seq.*

Consortium (parent-child), loss of . . . CV 315.03

Custody, interference with (See CUSTODY, INTERFERENCE WITH)

Damages for child

Generally . . . CV 407.23

Consortium (parent-child), loss of . . . CV 315.03

Earnings, loss of . . . CV 407.21

Emancipation, effect of . . . CV 407.21

Inclusion or exclusion in damages for parent . . . CV 315.27

Negligence by parent, effect of . . . CV 407.17

Delinquency or unruliness, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)

Duty of parents . . . CV 407.15

Earnings, recovery for loss of . . . CV 407.21

Emancipation . . . CV 407.21

Endangerment . . . CR 519.22

Enticement, criminal . . . CR 505.05

Family offenses (See FAMILY OFFENSES)

Injury to, award for . . . CV 407.23

Miscarriage, damages . . . CV 315.07

Motor vehicle, operation of . . . CV 407.09

Negligence (See NEGLIGENCE, subhead: Children, actions by or involving)

Ordinary care of or by (See NEGLIGENCE, subhead: Ordinary care)

Paternity claim, exhibiting of child in . . . CV 705.09

Permanent disabling harm to victim under age ten . . . CR 541.1426

Safety of child, care for . . . CV 407.01

Schools (See SCHOOLS)

Sex offenses involving (See SEX OFFENSES)

Sexual abuse . . . CR 519.22



[References are to civil (CV) and criminal (CR) instruction numbers.]

## **CHILDREN —Cont.**

- Statutory violations by . . . CV 407.07
- Stealing of child . . . CR 505.04
- Stillbirth, damages . . . CV 315.07
- Support claims (See CHILD SUPPORT)
- Tobacco products, illegal distribution of . . . CR 527.02(B)(1) *et seq.*
- Tort of child, liability of parents for . . . CV 407.19
- Under age ten, permanent disabling harm to victim . . . CR 541.1426
- Unruliness, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)

## **CHILD SUPPORT**

- Interference with issuance or modification of support order . . . CR 519.231
- Nonsupport, claim for
  - Generally . . . CR 519.21(A); CR 519.21(B)
  - Contributing to nonsupport of dependents . . . CR 519.21(C)

## **CIGARETTES, ILLEGAL DISTRIBUTION OF (See TOBACCO PRODUCTS, ILLEGAL DISTRIBUTION OF)**

## **CIRCUMSTANTIAL EVIDENCE**

- Defined . . . CR 409.01; CV 305.01

## **CIVIL CONSPIRACY**

- Plaintiff's claim . . . CV 443.01

## **CIVIL RIGHTS**

- Deprivation of . . . CV 713.01
- Interference with . . . CR 521.45

## **CIVIL RULES**

- General instructions . . . CV 101.45

## **CLEAR AND CONVINCING EVIDENCE**

- Generally . . . CV 303.07

## **CLOSING INSTRUCTIONS**

- Alternate jurors . . . CR 425.39; CV 317.05
- Common closing remarks . . . CR 425.35; CV 317.03
- Final instructions (See FINAL INSTRUCTIONS)
- Introductory instructions . . . CV 317.01
- Sample final instructions . . . CV 207.39

## **CLOSING REMARKS**

- Final instructions, sample . . . CR 207.31; CV 207.35

## **COERCION**

- Generally . . . CR 505.12

## **COIN MACHINES, TAMPERING WITH**

- Generally . . . CR 511.32

## **COMA OR BLACKOUT**

- Acts committed while in . . . CR 417.07
- Negligence, excuse for
  - Generally . . . CV 401.21
  - Affirmative defenses for automobile negligence . . . CV 411.73

## **COMMISSIONS AND FEES**

- Broker's commission, recovery of . . . CV 605.01

## **COMMON CARRIERS, NEGLIGENCE BY**

- Generally . . . CV 401.35
- Highest degree of care . . . CV 401.37

## **COMMON LAW MARRIAGE**

- Determination of . . . CV 701.15

## **COMPANION ANIMALS**

- Cruelty to . . . CR 559.131

## **COMPARATIVE FAULT**

- Interrogatories on future damages
  - One defendant
    - Not required . . . CV 403.01
    - Required . . . CV 403.05
  - Two or more defendants
    - Not required . . . CV 403.03
    - Required . . . CV 403.07

## **COMPARATIVE NEGLIGENCE**

- Children, duty of parents in actions by or involving . . . CV 407.15
- Comparative fault (See COMPARATIVE FAULT)
- Conclusions
  - One plaintiff, one defendant . . . CV 406.01
  - Two or more defendants
    - Without plaintiff negligence . . . CV 406.03
    - With plaintiff negligence . . . CV 406.05
- Fault, comparative (See COMPARATIVE FAULT)
- Interrogatories on future damages
  - Comparative fault (See COMPARATIVE FAULT)
  - Failure to answer; instructions during deliberations . . . CV 319.07
  - One defendant
    - Not required . . . CV 403.01
    - Required . . . CV 403.05
  - Two or more defendants
    - Not required . . . CV 403.03
    - Required . . . CV 315.11; CV 403.07
- Issues regarding negligence, presentation of (See NEGLIGENCE, subhead: Issues, presentation of)
- Last clear chance as element . . . CV 403.13
- One defendant
  - Generally . . . CV 403.01
  - Conclusions . . . CV 406.01
  - Interrogatories (See subhead: Interrogatories on future damages)
- Proximate cause (See PROXIMATE CAUSE)
- Rescue or attempted rescue of another . . . CV 403.11
- Risk, assumption of . . . CV 403.09
- Two or more defendants
  - Generally . . . CV 403.03
  - Conclusions
    - Without plaintiff negligence . . . CV 406.03
    - With plaintiff negligence . . . CV 406.05
  - Interrogatories (See subhead: Interrogatories on future damages)

## **COMPETENCE OF WITNESSES**

- Paternity claim, parties in . . . CV 705.11
- Questioned competence of; instructions during trial . . . CV 309.21



[References are to civil (CV) and criminal (CR) instruction numbers.]

## COMPLAINTS, FILING OF FALSE (See FALSE COMPLAINTS, FILING OF)

### COMPLICITY

Generally . . . CR 523.03

#### Specifications

Generally . . . CR 541.01

#### Firearms

One year . . . CR 541.141

Three year . . . CR 541.145

### COMPOUNDING OF CRIME

Generally . . . CR 521.21

### COMPUTER USE

Denial of access . . . CR 513.81

#### Unauthorized use

Generally . . . CR 513.04

Failure to report . . . CR 521.22(A)

### CONCEALMENT OF ASSETS

Generally . . . CV 447.01

### CONCLUDING INSTRUCTIONS

Generally . . . CR 101.59; CR 425.01; CV 101.59

Affirmative defense . . . CR 425.03; CV 313.05

Negligence conclusions (See NEGLIGENCE, subhead: Conclusions)

One plaintiff, one defendant

Generally . . . CV 313.01

Negligence conclusions . . . CV 406.01

Two or more defendants

Generally . . . CV 313.03

Negligence conclusions

Without plaintiff negligence . . . CV 406.03

With plaintiff negligence . . . CV 406.05

### CONFIDENTIAL INFORMATION

Disclosure of . . . CR 521.24

### CONSCIOUSNESS OF GUILT

Evidence of . . . CR 409.13

### CONSENT AGREEMENTS

Violation of . . . CR 519.27

### CONSORTIUM, LOSS OF

Damages . . . CV 315.03

### CONSPIRACY

Generally . . . CR 523.01

Civil conspiracy; plaintiff's claim . . . CV 443.01

RICO offenses (See RICO OFFENSES, subhead: Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt)

### CONSUMER SALES PRACTICES ACT

Generally . . . CV 521.01

Rebates or discounts, illegal . . . CV 521.03

Title insurance agents, violations by . . . CV 525.21

### CONTAMINATION

Blood, selling or donation of contaminated . . . CR 527.13

False report, spreading of . . . CR 527.24(C)

Human consumption items, of . . . CR 527.24(B)

### CONTRACTS

Acceptance . . . CV 501.05

Accord and satisfaction as affirmative defense . . . CV 501.25

#### Affirmative defenses

Accord and satisfaction . . . CV 501.25

Duress . . . CV 501.29

Frustration of purpose . . . CV 501.15

#### Impracticability

Generally . . . CV 501.17

Government action, due to . . . CV 501.19

#### Mistake of fact

Mutual . . . CV 501.11

Unilateral . . . CV 501.13

Payment . . . CV 501.23

Prevention of performance . . . CV 501.21

Satisfaction . . . CV 501.23; CV 501.25

Waiver . . . CV 501.27

#### Agency liability

Generally . . . CV 423.01

Independent contractors (See AGENCY LIABILITY, subhead: Independent contractors)

Bailments (See BAILMENTS)

#### Damages

Expectation . . . CV 501.33

Reliance . . . CV 501.35

Defined . . . CV 501.03

Duress as affirmative defense . . . CV 501.29

Employment (See EMPLOYMENT RELATIONS, subhead: Contracts)

Express contracts . . . CV 501.03

Formation of contract . . . CV 501.03

Frustration of purpose as affirmative defense . . . CV 501.15

Government action, impracticability due to; affirmative defense . . . CV 501.19

Implied contract . . . CV 501.03

Impracticability as affirmative defense

Generally . . . CV 501.17

Government action, impracticability due to . . . CV 501.19

Intent of parties . . . CV 501.07

Interference with contractual relationship, tortious . . . CV 453.03

Interpretation of contract . . . CV 501.07

#### Mistake of fact

Affirmative defense, as

Mutual mistake . . . CV 501.11

Unilateral mistake . . . CV 501.13

Mistake/implied in fact contract . . . CV 501.39

Modification of contract . . . CV 501.09

Offer and acceptance . . . CV 501.05

Payment as affirmative defense . . . CV 501.23

Plaintiff, claim by . . . CV 501.01

Prevention of performance as affirmative defense . . . CV 501.21

Promissory estoppel . . . CV 501.31

Public contract, unlawful interest in . . . CR 521.42

Quantum meruit . . . CV 501.39

Rescission and restitution . . . CV 501.37

Sale of goods (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))



[References are to civil (CV) and criminal (CR) instruction numbers.]

### CONTRACTS—Cont.

- Satisfaction as affirmative defense . . . CV 501.23; CV 501.25
- Suretyship contracts, strict construction of . . . CV 513.03
- Tortious interference with contractual relationship . . . CV 453.03
- Uniform Commercial Code, contracts for sale of goods under (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))
- Unjust enrichment, recovery for . . . CV 501.39
- Waiver as affirmative defense . . . CV 501.27

### CONTROLLED SUBSTANCES OFFENSES (See DRUG OFFENSES)

### CONVERSION

- Abandonment, defense of . . . CV 625.07
- Accrual of action . . . CV 625.03
- Defined . . . CV 625.01
- Mortgagee, by . . . CV 625.05

### CORPSE, ABUSE OF

- Generally . . . CR 527.01

### CORRUPT ACTIVITIES

- Engaging in pattern of . . . CR 523.32(A)(1); CR 523.32(A)(2); CR 523.32(A)(3)
- RICO (See RICO OFFENSES)

### COUNTERCLAIM

- Submission of . . . CV 311.07

### COUNTERFEITING

- Controlled substances . . . CR 525.37
- Trademarks . . . CR 513.34
- Vehicle identification numbers . . . CR 749.62(C)

### CREDIBILITY

- Generally . . . CR 409.05; CV 305.05
- Sample final instructions . . . CR 207.05; CV 207.11

### CREDIT CARDS

- Misuse of . . . CR 513.21
- Theft, value . . . CR 425.23

### CREDITORS

- Defrauding of . . . CR 513.45
- Extortionate extension of credit . . . CR 505.22

### CRIMINAL RECORD INFORMATION

- Misuse of . . . CR 527.22

### CRIMINAL RULES

- General instructions . . . CR 101.45

### CUSTODY, INTERFERENCE WITH

- Generally . . . CR 519.23(A)
- Removal of child . . . CR 519.23(B)
- Stealing of child . . . CR 505.04

## D

### DAMAGES

- Acceleration or aggravation of condition . . . CV 315.15

### DAMAGES—Cont.

- Alcoholic beverages, service of
  - Generally . . . CV 413.11
  - Civil Damages Act, under . . . CV 413.07
- Annuity cost in claim for future damages . . . CV 315.13
- Attorneys' fees, reasonable . . . CV 315.39
- Automobile damage or loss . . . CV 315.19
- Broker's liability for . . . CV 605.09
- Child, damages for (See CHILDREN, subhead: Damages for child)
- Comparative negligence actions, interrogatories in (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
- Compensatory damages
  - Nuisance . . . CV 621.13
  - Wrongful death . . . CV 315.49
- Consortium, loss of . . . CV 315.03
- Contract claims
  - Expectation damages . . . CV 501.33
  - Reliance damages . . . CV 501.35
- Criminal act, personal injuries resulting from . . . CV 455.01
- Defamation . . . CV 431.07
- Discrimination, employment . . . CV 533.25
- Earnings, loss of
  - Generally . . . CV 315.17
  - Minor, recovery by . . . CV 407.21
- Eminent domain actions, loss of value of remaining land in . . . CV 609.09
- Fraud . . . CV 449.15
- Future damages
  - Income tax considerations . . . CV 315.45
  - Interrogatories in comparative negligence actions (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
  - Present value of . . . CV 315.45
  - Tort actions based on claim for (See subhead: Tort actions based on claim for future damages)
- Governmental liability . . . CV 425.15
- Guarantees, actions involving . . . CV 509.07
- Income tax considerations on future damages . . . CV 315.45
- Intentional tort claims; allocation of damages, multiple defendants, interrogatories required
  - Generally . . . CV 429.09
  - Other tortious conduct claims, with . . . CV 429.11
- Interrogatories
  - Comparative negligence actions, in (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
  - Intentional tort claims; allocation of damages, multiple defendants, interrogatories required
    - Generally . . . CV 429.09
    - Other tortious conduct claims, with . . . CV 429.11
- Joinder, denial of . . . CV 315.27
- Joint trial of separate claims . . . CV 315.31
- Limitation on recovery . . . CV 315.27
- Loss of use . . . CV 315.21
- Mathematic formula for . . . CV 315.05
- Medical expenses, limitation to . . . CV 315.27
- Miscarriage . . . CV 315.07



[References are to civil (CV) and criminal (CR) instruction numbers.]

**DAMAGES—Cont.**

- Mitigation, duty of . . . CV 315.51
- Mobile home park claims (See **MOBILE HOME PARKS**)
- Mortality table, use of . . . CV 315.43
- Multiple defendants
  - Generally . . . CV 315.33
  - Intentional tort claims; allocation of damages, interrogatories required
    - Generally . . . CV 429.09
    - Other tortious conduct claims, with . . . CV 429.11
- Negligence actions (See **NEGLIGENCE**)
- Nominal damages . . . CV 315.53
- Nuisance, compensatory damages for . . . CV 621.13
- Personal injury
  - Generally . . . CV 315.01
  - Criminal act, resulting from . . . CV 455.01
  - Final instructions sample . . . CV 207.21
  - Joint trial of separate claims . . . CV 315.31
  - Tort actions . . . CV 315.01
- Personal property damage or loss
  - Generally . . . CV 315.19
  - Automobiles . . . CV 315.19
  - Market value, property without . . . CV 315.23
- Product liability . . . CV 451.21
- Punitive damages in tort actions on claims . . . CV 315.37
- Quotient verdicts . . . CV 315.41
- Real property, damage to . . . CV 315.35
- Residential lending practices . . . CV 525.19
- RICO offenses
  - Acquiring or maintaining interest in enterprise or real property . . . CV 445.13
  - Conducting or participating in affairs of enterprise . . . CV 445.07
  - Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt . . . CV 445.25
  - Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise . . . CV 445.19
- Sale of goods, contracts for (See **SALE OF GOODS, CONTRACTS FOR (U.C.C.)**)
- Separate claims, joint trial of . . . CV 315.31
- Spouse's damages, inclusion or exclusion of . . . CV 315.27
- Stillbirth . . . CV 315.07
- Subrogation . . . CV 315.25
- Substantial defined . . . CV 315.37
- Tort actions
  - Business relationship, tortious interference with . . . CV 453.01
  - Contractual relationship, tortious interference with . . . CV 453.03
  - Future damages (See subhead: Tort actions based on claim for future damages)
  - Inheritance, tortious interference with expectancy of . . . CV 453.07
  - Intentional tort claims; allocation of damages, multiple defendants, interrogatories required
    - Generally . . . CV 429.09
    - Other tortious conduct claims, with . . . CV 429.11

**DAMAGES—Cont.****Tort actions—Cont.**

- Personal injury . . . CV 315.01
- Punitive damages on claims . . . CV 315.37
- Tort actions based on claim for future damages
  - Annuity, cost of . . . CV 315.13
  - One defendant; periodic payments in non-comparative negligence tort actions . . . CV 315.09
  - Two defendants with interrogatories; periodic payments in comparative negligence tort actions . . . CV 315.11
- Wrongful death, compensatory damages for . . . CV 315.49

**DAMAGING OR ENDANGERING**

Criminal . . . CR 509.06

**DEADLOCKED JURY**

Generally . . . CR 429.09; CV 319.07

**DEATH**

- Knowledge of, failure to report . . . CR 521.22(C); CR 521.22(D)
- Wrongful (See **WRONGFUL DEATH**)

**DEFAMATION**

- Business relationship, tortious interference with . . . CV 453.01
- Contractual relationship, tortious interference with . . . CV 453.03
- Damages . . . CV 431.07
- Employment relations, tortious interference with . . . CV 453.05
- Private figures
  - Labor dispute involved or qualified privilege applying . . . CV 431.05
  - Public and private issues, involving . . . CV 431.03
- Public figures . . . CV 431.01
- Public officials . . . CV 431.01

**DEFENDANTS (GENERALLY)**

- Believe, reasonable cause to . . . CR 417.37
- Comparative negligence claims (See **COMPARATIVE NEGLIGENCE**, subheads: One defendant; Two or more defendants)
- Multiple defendants
  - General instruction . . . CV 311.03
  - Concluding instructions . . . CR 425.05
  - Damage claims . . . CV 315.33
  - Intentional tort claims; allocation of damages, interrogatories required
    - Generally . . . CV 429.09
    - Other tortious conduct claims, with . . . CV 429.11
  - Weighing of evidence from . . . CR 409.15
- Reasonable cause to believe . . . CR 417.37
- Self-representation . . . CR 401.03
- Testimony, refusal or inability to give . . . CR 207.15; CR 409.07

**DEFENSES**

- Accident . . . CR 421.01
- Affirmative defenses
  - Generally . . . CR 417.27



[References are to civil (CV) and criminal (CR) instruction numbers.]

## DEFENSES—Cont.

### Affirmative defenses—Cont.

- Automobile negligence . . . CV 411.73
- Burden of proof (See BURDEN OF PROOF)
- Concluding instructions . . . CR 425.03; CV 313.05
- Contract claims (See CONTRACTS, subhead: Affirmative defenses)
- Discrimination in employment
  - Generally . . . CV 533.21
  - Business necessity . . . CV 533.09
- Eviction from mobile home park . . . CV 613.11
- Guarantees, actions involving . . . CV 509.05
- Product liability . . . CV 451.19
- Sample final instructions . . . CR 207.19
- Alibi . . . CR 421.03
- Anger as defense to homicide . . . CR 421.11
- Animals, liability for . . . CV 409.03
- Automobile negligence, affirmative defenses for . . . CV 411.73
- Battered person syndrome . . . CR 417.43
- Character . . . CR 421.05
- Concealment of assets . . . CV 447.01
- Contract claims, affirmative defenses in (See CONTRACTS, subhead: Affirmative defenses)
- Conversion, abandonment as defense to . . . CV 625.07
- Defense of another, tests for reasonable . . . CR 421.23
- Discrimination in employment; affirmative defenses
  - Generally . . . CV 533.21
  - Business necessity . . . CV 533.09
- Drug use as defense to homicide . . . CR 421.11
- Duress
  - Generally . . . CR 421.15
  - Affirmative defense in contract claim, as . . . CV 501.29
- Embezzlement . . . CV 447.01
- Entrapment, unlawful . . . CR 421.17
- Eviction from mobile home park, affirmative defense to . . . CV 613.11
- Fraud in real estate sales; *caveat emptor* defense . . . CV 449.13
- Governmental liability . . . CV 425.11
- Guarantees, actions involving . . . CV 509.05
- Insanity defense (See INSANITY DEFENSE)
- Insurer's defense of exposure to unnecessary danger . . . CV 709.37
- Intoxication (See INTOXICATION)
- Malicious prosecution
  - Civil prosecution, malicious . . . CV 439.01
  - Criminal prosecution, malicious . . . CV 439.03
- Necessity . . . CR 421.13
- Negligence (See NEGLIGENCE)
- Other causes of event . . . CR 417.25
- Product liability, affirmative defenses to . . . CV 451.19
- Reputation . . . CR 421.05
- Self-defense
  - Battered person syndrome . . . CR 417.43
  - Bodily harm, against danger of . . . CR 421.19; CR 421.21; CR 421.211
  - Deadly force
    - Defined . . . CR 421.21; CR 421.211
    - Use of . . . CR 421.21; CR 421.211

## DEFENSES—Cont.

### Self-defense—Cont.

- Death or great bodily harm, against danger of . . . CR 421.19; CR 421.21; CR 421.211
- Defense of another . . . CR 421.191
- Dwelling defined . . . CR 421.19; CR 421.21
- Harm to person, against danger of . . . CR 421.19
- Immediate family defined . . . CR 421.19; CR 421.21
- Non-deadly force
  - Defined . . . CR 421.19
  - Use of . . . CR 421.191
- Reasonable grounds and honest belief test . . . CR 421.21; CR 421.211
- Reasonableness tests . . . CR 421.23
- Residence defined . . . CR 421.19; CR 421.21
- Substantial risk defined . . . CR 421.19; CR 421.21; CR 421.191; CR 421.211
- Tests for reasonableness . . . CR 421.23
- Vehicle defined . . . CR 421.19; CR 421.21
- Wrongful conveyance . . . CV 447.01
- Wrongful possession . . . CV 447.01

## DELIBERATIONS, INSTRUCTIONS DURING

- Generally . . . CR 101.83; CV 101.83
- Deadlocked jury . . . CR 429.09; CV 319.07
- Discussion of case during interruptions, admonition against . . . CV 319.01
- Interruptions . . . CR 429.01
- Law, regarding . . . CR 429.07
- Mistrial declared . . . CV 319.07
- Questions by jury . . . CR 429.05
- Sample final instruction . . . CR 207.33; CV 207.33
- Sequestration . . . CR 429.03
- Verdict, possibility of or failure to reach . . . CR 429.09; CR 429.11; CV 319.07

## DELIVERY OF INSTRUCTIONS (GENERALLY)

- Generally . . . CR 405.01
- Effective delivery
  - Generally . . . CR 101.09; CV 101.09
  - General instructions . . . CR 101.79; CV 101.79
  - Test for . . . CR 101.11; CV 101.11
- Time of delivery
  - Generally . . . CR 101.07; CV 101.07
  - Stages of trial, throughout . . . CR 101.03; CV 101.03

## DEMONSTRATIONS

- Instructions prior to conducting of . . . CR 401.17; CV 309.17

## DEPOSITIONS

- Generally . . . CR 409.27; CV 309.07

## DEPRIVING OF PROPERTY

- Defined . . . CR 417.13

## DERELICTION OF DUTY

- Detention facilities, officers in . . . CR 521.44(C)
- Judicial officers . . . CR 521.44(B)
- Law enforcement officers . . . CR 521.44(A); CR 521.44(B)
- Ministerial officers . . . CR 521.44(B)
- Public officials . . . CR 521.44(D)



[References are to civil (CV) and criminal (CR) instruction numbers.]

**DERELICTION OF DUTY—Cont.**

Public servants . . . CR 521.44(E)

**DESECRATION**

Generally . . . CR 527.11

**DETAINEES (See PRISONS, PRISONERS AND DE-TAINEES)****DIRECT EVIDENCE**

Defined . . . CR 409.01; CV 305.01

**DISABLED PERSONS AND DISABILITIES**

Assistance dog

Assault of . . . CR 521.321

Theft of . . . CR 513.02

Blind persons, failure to yield right of way to . . . CV 411.63

Child under age ten, permanent disabling harm to . . . CR 541.1426

Discrimination, employment

Generally . . . CV 533.11

Reasonable accommodation . . . CV 533.13

Identity fraud . . . CR 513.49

Insurance claims for total disability (See INSURANCE, subhead: Disability, total)

Negligence and ordinary care . . . CV 401.09

Theft or fraud, value and special property . . . CR 425.23; CR 513.02

**DISCHARGE OF JURY**

Generally . . . CR 101.87; CV 101.87

Agreement, without . . . CR 429.11

Overnight adjournment . . . CV 317.09

Rights after discharge . . . CR 429.13

**DISCRIMINATION, EMPLOYMENT**

Generally . . . CV 533.01

Adverse impact claims . . . CV 533.07

Business necessity defense . . . CV 533.09

Circumstantial evidence; disparate treatment claims . . . CV 533.03

Constructive discharge . . . CV 533.23

Damages . . . CV 533.25

Defenses, affirmative

Generally . . . CV 533.21

Business necessity . . . CV 533.09

Direct evidence; disparate treatment claims . . . CV 533.05

Disability discrimination

Generally . . . CV 533.11

Reasonable accommodation . . . CV 533.13

Disparate impact claims . . . CV 533.07

Disparate treatment claims

Direct evidence . . . CV 533.05

Indirect evidence . . . CV 533.03

Hostile work environment; sexual harassment . . . CV 533.17

Reasonable accommodation . . . CV 533.13

Retaliation . . . CV 533.19

Sexual harassment

Hostile work environment . . . CV 533.17

Loss of tangible job benefit . . . CV 533.15

**DISORDERLY CONDUCT**

After 3/23/19 . . . CR 517.11(A); CR 517.11(B)

After 1/25/02 but before 3/23/19 . . . CR 517.11(A); CR 517.11(B)

Riot (See RIOT)

**DISPUTED ISSUES**

General instructions . . . CR 101.53; CV 101.53

**DOCUMENTS**

Drug documents, illegal processing of . . . CR 525.23

Residential lending, failure to return original documents related to . . . CV 525.11

Unlawful conduct with respect to documents . . . CR 505.33

**DOGS**

Assistance dog

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Failure to confine . . . CR 555.22

Fighting . . . CR 559.03

Liability for . . . CV 409.01

Police dog

Assaulting . . . CR 521.321

Theft . . . CR 513.02

Service dog, theft of . . . CR 513.02

Theft of . . . CR 513.02

**DOMESTIC VIOLENCE**

Generally . . . CR 519.25

Sample final instructions . . . CR 207.17

**DRIVER'S LICENSE OFFENSES**

Blank driver's license form, theft, value . . . CR 425.23

Expired license, operation of vehicle with . . . CR 710.12(A)(1)(b)

Financial responsibility suspension, operation of vehicle while under . . . CR 710.16

Motorcycle operated without valid license . . . CR 710.12(A)(2)

OVI suspension, operation of vehicle under . . . CR 710.14

Reinstatement of license after suspension, operation of vehicle without . . . CR 710.21

Restricted license, operation of vehicle in violation of . . . CR 710.11(B)

Suspended license, operation of vehicle under . . . CR 710.11(A)

Financial responsibility suspension . . . CR 710.16

OVI suspension . . . CR 710.14

Reinstatement of license after suspension, operation of vehicle without . . . CR 710.21

Twelve-point suspension . . . CR 710.037

Twelve-point suspension, operation of vehicle under . . . CR 710.037

Valid license, operation of vehicle without

Expired license . . . CR 710.12(A)(1)(b)

Motorcycle . . . CR 710.12(A)(2)

No license ever issued . . . CR 710.12(A)(1)(a)

**DRUGGISTS**

Care, standard of . . . CV 419.01



[References are to civil (CV) and criminal (CR) instruction numbers.]

**DRUGGISTS—Cont.**

- Ephedrine product, unlawful or improper sale of . . . CR 525.56
- Pseudoephedrine product, unlawful or improper sale of . . . CR 525.56

**DRUG OFFENSES****Abuse**

- Generally . . . CR 525.11
- Instruments, possession of . . . CR 525.12
- Intoxicants . . . CR 525.31
- Permitting . . . CR 525.13
- Aggravated possession . . . CR 525.11
- Anabolic steroids, administration or distribution of . . . CR 525.06
- Animal drugs, trafficking in . . . CR 525.09(B)
- Cocaine, possession of . . . CR 525.11
- Corrupting another . . . CR 525.02
- Counterfeit controlled substances, offenses involving . . . CR 525.37
- Deception to obtain drugs . . . CR 525.22
- Defenses based on acting under influence of drugs; homicide . . . CR 421.11
- Documents, drug; illegal processing of . . . CR 525.23
- Ephedrine product
  - Purchase of, unlawful or improper . . . CR 525.55
  - Sale of, unlawful or improper . . . CR 525.56
- Eviction of tenant for . . . CV 613.05
- Forfeiture pursuant to . . . CR 525.42
- Funding of drug or marijuana trafficking . . . CR 525.05
- Hashish, possession of . . . CR 525.11
- Heroin, possession of . . . CR 525.11
- Homicide, drug use as defense to . . . CR 421.11
- Instruments of drug abuse, possession of . . . CR 525.12
- Intoxicants
  - Abuse . . . CR 525.31
  - Trafficking . . . CR 525.32
- LSD, possession of . . . CR 525.11
- Manufacture, illegal
  - Generally . . . CR 525.04
  - Chemicals for, assembly or possession of . . . CR 525.041
- Marijuana
  - Aggravated possession . . . CR 525.11
  - Cultivation . . . CR 525.04
  - Trafficking, funding of . . . CR 525.05
- Nitrous oxide, possession in motor vehicle of . . . CR 525.33
- Non-controlled substances, trafficking in . . . CR 525.09(A)
- Paraphernalia offenses . . . CR 525.14(C)
- Possession
  - Aggravated . . . CR 525.11
  - Chemicals for manufacture of drugs . . . CR 525.041
  - Defined . . . CR 417.21
  - Drug abuse instruments . . . CR 525.12
  - Nitrous oxide in motor vehicle . . . CR 525.33
- Pseudoephedrine product
  - Purchase of, unlawful or improper . . . CR 525.55
  - Sale of, unlawful or improper . . . CR 525.56

**DRUG OFFENSES—Cont.**

- Sale, preparation of drugs for . . . CR 525.07
- Samples, dispensing of . . . CR 525.36
- Tampering with drugs . . . CR 525.24
- Theft of dangerous drugs . . . CR 513.02
- Trafficking
  - Generally . . . CR 525.03
  - Animal drugs . . . CR 525.09(B)
  - Intoxicants . . . CR 525.32
  - Marijuana trafficking, funding of . . . CR 525.05
  - Non-controlled substances . . . CR 525.09(A)
- Traffic offenses; operation under influence of alcohol or drugs
  - Generally . . . CR 711.19
  - Physical control of vehicle while under influence . . . CR 711.194
  - Prohibited alcohol or drug concentration, operating with . . . CR 711.19(A)(1)(b)-(j)
  - Refusal to submit to chemical test . . . CR 711.19(A)(2)
- Watercraft and waterways violations
  - Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)
  - Prohibited alcohol or drug concentration, operating vessel with . . . CR 547.11(A)(2)-(6)

**DURESS**

- Defense of
  - Generally . . . CR 421.15
  - Affirmative defense in contract claim, as . . . CV 501.29

**E****EASEMENTS**

- Generally . . . CV 601.09
- Eminent domain actions, treatment in . . . CV 609.13

**ECONOMIC RELATIONSHIPS, INTERFERENCE WITH**

- Business relationship, tortious interference with . . . CV 453.01
- Contractual relationship, tortious interference with . . . CV 453.03
- Employment relations, tortious interference with . . . CV 453.05
- Inheritance, tortious interference with expectancy of . . . CV 453.07

**EJECTMENT**

- Generally . . . CV 601.01

**ELDERLY PERSONS**

- Identity fraud . . . CR 513.49
- Theft or fraud, value and special property . . . CR 425.23; CR 513.02

**EMANCIPATION**

- Defined . . . CV 407.21
- Loss of earnings, ability to recover . . . CV 407.21

**EMBEZZLEMENT**

- Generally . . . CV 447.01



[References are to civil (CV) and criminal (CR) instruction numbers.]

**EMINENT DOMAIN**

- Generally . . . CV 609.01
- Appraisal of structures . . . CV 609.11
- Compensation
  - Generally . . . CV 609.05
  - Easements . . . CV 609.13
  - Fixtures, valuation of . . . CV 609.15
  - Natural assets, valuation of . . . CV 609.17
  - Potential use considerations . . . CV 609.07
  - Special use property, valuation of . . . CV 609.19
  - Structures, appraisal of . . . CV 609.11
- Concluding instructions . . . CV 609.21
- Damages for loss of value of remaining land . . . CV 609.09
- Easements, treatment of . . . CV 609.13
- Fixtures, valuation of . . . CV 609.15
- Natural assets, valuation of . . . CV 609.17
- Potential use considerations in compensation . . . CV 609.07
- Special use property, valuation of . . . CV 609.19
- Structures, appraisal of . . . CV 609.11
- Verdict . . . CV 323.05; CV 609.23
- View of property by jury . . . CV 609.03

**EMOTIONAL DISTRESS, INFLICTION OF**

- Intentional . . . CV 429.05
- Negligent . . . CV 429.07

**EMPLOYMENT RELATIONS**

- Contracts
  - Generally . . . CV 537.01
  - Breach of contract, employer liability for . . . CV 537.15
  - Promissory estoppel . . . CV 537.03
  - Third party, liability to . . . CV 537.05
- Defamation of private figures involved in labor dispute . . . CV 431.05
- Discrimination (See DISCRIMINATION, EMPLOYMENT)
- Employee injury, disease, condition, or death; employer intentional tort . . . CV 537.09
- Fair representation, union's duty of . . . CV 537.15
- Hostile work environment claim; sexual harassment . . . CV 533.17
- Intentional torts . . . CV 537.09
- Interference with, tortious . . . CV 453.05
- Labor-management disputes . . . CV 537.13
- Liability
  - Employees, to . . . CV 537.15
  - Government employees acting in proprietary function . . . CV 425.03
  - Third parties, to
    - Contract claims . . . CV 537.05
    - Tort claims . . . CV 537.07
- Physical injuries to employees; employer intentional tort . . . CV 537.09
- Sexual harassment
  - Hostile work environment . . . CV 533.17
  - Loss of tangible job benefit . . . CV 533.15
- Torts
  - Employee injury, disease, condition, or death . . . CV 537.09
  - Intentional torts . . . CV 537.09

**EMPLOYMENT RELATIONS—Cont.**

- Torts—Cont.
  - Interference with employment relations, tortious . . . CV 453.05
  - Physical injuries to employees . . . CV 537.09
  - Third parties, liability to . . . CV 537.07
  - Wrongful discharge as public policy tort . . . CV 537.17
- Trade secrets, appropriation of . . . CV 537.11
- Workers' compensation claims (See WORKERS' COMPENSATION CLAIMS)
- Wrongful discharge as public policy tort . . . CV 537.17

**ENDANGERING**

- Aircraft-airport operations . . . CR 509.08
- Criminal . . . CR 509.06
- Patients . . . CR 503.341

**ENTRAPMENT**

- Defense of unlawful . . . CR 421.17

**ERROR IN INSTRUCTIONS**

- Appeal, as basis for . . . CR 101.17; CV 101.17

**ESCAPE**

- Generally . . . CR 521.34(A)(1)
- Aiding of
  - Generally . . . CR 521.35(B)
  - Conveyance of item into detention facility . . . CR 521.35(A); CR 521.36
- Sexually violent predator . . . CR 521.34(A)(2)

**EVICTIION, RESIDENTIAL**

- Breach of tenant obligations . . . CV 613.03
- Drug activity . . . CV 613.05
- Mobile home parks (See MOBILE HOME PARKS)
- Non-payment of rent
  - Generally . . . CV 613.01
  - Mobile home park tenant . . . CV 613.13

**EVIDENCE**

- Generally . . . CR 101.33; CV 101.33
- Accomplice testimony . . . CR 409.17
- Acts of witnesses, weighing of testimony on . . . CR 409.33
- Audiotapes . . . CR 409.29
- Battered person syndrome . . . CR 417.43
- Circumstantial evidence defined . . . CR 409.01; CV 305.01
- Civil case, results in . . . CR 405.09
- Clear and convincing . . . CV 303.07
- Consciousness of guilt . . . CR 409.13
- Credibility and tests for . . . CR 409.05; CV 305.05
- Defined . . . CR 409.01; CV 305.01
- Depositions . . . CR 409.27; CV 309.07
- Destruction of . . . CV 437.01
- Direct evidence defined . . . CR 409.01; CV 305.01
- Exclusions from
  - Generally . . . CR 409.03; CV 305.03
  - Sample final instruction . . . CV 207.09
- Exhibits . . . CR 409.25
- Expert testimony (See EXPERT WITNESSES)
- Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05



[References are to civil (CV) and criminal (CR) instruction numbers.]

## **EVIDENCE—Cont.**

- Guilt, consciousness of . . . CR 409.13
- Interpreters and translators
  - Civil trials, in . . . CV 301.13
  - Criminal trials, in . . . CR 401.29
- Layman's opinion . . . CR 409.19; CV 309.09
- Limited purpose evidence; instructions during trial
  - . . . CR 401.23; CV 309.05
- Multiple defendants, evidence from . . . CR 409.15
- Polygraph tests . . . CR 409.23
- Preponderance of evidence . . . CR 417.29; CV 303.05
- Presumptions . . . CR 417.33
- Prima facie evidence (See PRIMA FACIE EVIDENCE)
- Prior convictions and acts
  - Concluding instructions . . . CR 425.15
  - Trial, instructions during . . . CR 401.25; CR 409.11
- Sample instructions
  - Evidence and references, sample final instruction for
    - . . . CV 207.07
  - Exclusion, sample final instruction for . . . CV 207.09
  - Inferences, sample final instruction for evidence and
    - . . . CR 207.03
- Spoliation . . . CV 437.01
- Tampering with . . . CR 521.12
- Testimony (See TESTIMONY)
- Transcripts . . . CR 409.27; CV 309.07
- Translators, interpreters and
  - Civil trials, in . . . CV 301.13
  - Criminal trials, in . . . CR 401.29
- Videotapes . . . CR 409.31

## **EXHIBITS**

- Generally . . . CR 409.25
- Sample final instructions . . . CR 207.07

## **EXOTIC ANIMALS**

- Offenses related to . . . CR 551.13

## **EXPERIMENTS, TESTS OR DEMONSTRATIONS**

- Instructions prior to conducting of . . . CR 401.17; CV 309.17

## **EXPERT WITNESSES**

- Generally . . . CR 409.21; CV 309.11
- Fraud, opinions on . . . CV 449.07
- Hypothetical questions . . . CR 409.21; CV 309.11
- Paternity claim, serological tests in . . . CV 705.07
- Polygraph examiners . . . CR 409.23
- Sample final instructions . . . CV 207.15

## **EXPLOSIVE DEVICES**

- Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28
- Possession . . . CR 509.26
- Use, knowing or reckless . . . CR 509.27

## **EXTORTION**

- Generally . . . CR 505.11
- Coercion . . . CR 505.12
- Credit, extortionate extension of . . . CR 505.22

## **EYEWITNESSES**

- Credibility, weighing of . . . CR 409.05; CV 305.05

## **F**

### **FAILURE TO REPORT CRIME**

- Computer, cable, or telecommunications property, unauthorized use of . . . CR 521.22(A)
- Felony . . . CR 521.22(A)
- Gunshot or stab wound . . . CR 521.22(B)

### **FAIR HOUSING RIGHTS**

- Interference with . . . CR 527.03

### **FALSE ALARMS, MAKING OF**

- Generally . . . CR 517.32

### **FALSE ARREST**

- Generally . . . CV 441.01

### **FALSE COMPLAINTS, FILING OF**

- Patient abuse and neglect, complaint of . . . CR 503.35

### **FALSE LIGHT**

- Invasion of privacy . . . CV 433.05

### **FALSE REPORTS, MAKING OF**

- Child abuse or neglect . . . CR 521.14
- Contamination . . . CR 527.24(C)

### **FALSE REPRESENTATION**

- Firearm offense . . . CR 521.13
- Insurance claims . . . CV 709.17
- Removal proceeding . . . CR 521.13
- Theft offense . . . CR 521.13

### **FAMILY OFFENSES**

- Abortion offenses (See ABORTION OFFENSES)
- Bigamy . . . CR 519.01
- Consent agreement, violation of . . . CR 519.27
- Custody, interference with (See CUSTODY, INTERFERENCE WITH)
- Delinquency or unruliness of child, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)
- Domestic violence . . . CR 519.25
- Endangerment of child . . . CR 519.22
- Protection order, violation of . . . CR 519.27
- Support orders, violation of
  - Interference with issuance or modification of order
    - . . . CR 519.231
  - Nonsupport of dependents
    - Generally . . . CR 519.21(A); CR 519.21(B)
    - Contributing to nonsupport of dependents
      - . . . CR 519.21(C)
- Unruliness of child, contributing to (See JUVENILE DELINQUENCY, subhead: Contributing to delinquency or unruliness)

### **FINAL INSTRUCTIONS**

- Generally . . . CV 317.07
- Closing remarks . . . CR 425.43
- Preliminary instructions, repetition of . . . CR 101.29; CV 101.29
- Sample instructions
  - Additional finding . . . CR 207.29
  - Affirmative defense . . . CR 207.19
  - Alternate juror . . . CR 207.41
  - Burden of proof . . . CR 207.11; CV 207.03



[References are to civil (CV) and criminal (CR) instruction numbers.]

## FINAL INSTRUCTIONS—Cont.

### Sample instructions—Cont.

- Case-specific facts and law . . . CV 207.17
- Closing . . . CV 207.39
- Closing remarks, common . . . CR 207.31; CV 207.35
- Credibility . . . CR 207.05; CV 207.11
- Defendant refusing to give testimony . . . CR 207.15
- Deliberations, conduct during . . . CR 207.33
- Depositions . . . CV 207.13
- Domestic violence . . . CR 207.17
- Evidence and inferences . . . CR 207.03
- Evidence and references . . . CV 207.07
- Evidence excludes . . . CV 207.09
- Exhibits . . . CR 207.07
- Expert witness . . . CV 207.15
- Foreperson . . . CR 207.35
- Income taxes . . . CV 207.31
- Introduction . . . CR 207.01; CV 207.01
- Mathematical formula . . . CV 207.23
- Mitigate, duty to . . . CV 207.25
- Mortality table . . . CV 207.29
- Personal injury or damage . . . CV 207.21
- Preponderance . . . CR 207.21; CV 207.05
- Present value of future damage . . . CV 207.31
- Prior convictions . . . CR 207.09
- Proximate cause . . . CV 207.19
- Questions by jury . . . CR 207.37; CV 207.37
- Quotient verdict . . . CV 207.27
- Reasonable doubt . . . CR 207.13
- Reasonableness . . . CR 207.25
- Testimony, defendant refusing to give . . . CR 207.15
- Unanimous verdict . . . CR 207.39
- Verdict . . . CR 207.27
- Special requests . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75

## FIRE

- Accelerant to initiate or increase growth or spread of fire, use of . . . CR 541.1425
- Insurance (See INSURANCE, subhead: Fire, loss by)

## FIRE AND POLICE PERSONNEL

- Acts of police, weighing of testimony on . . . CR 409.33
- Aggravated vehicular homicide specification, peace officer as victim of . . . CR 541.1414
- Dereliction of duty by law enforcement officers . . . CR 521.44(A); CR 521.44(B)
- Discharge of firearm at peace officer or correction officer specification . . . CR 541.1412
- Failure to obey order of police officer
  - Generally . . . CR 521.331
  - Traffic offenses . . . CV 411.03
- Impersonation of officer (See IMPERSONATION OF OFFICER)
- Justice and public administration, offenses against (See JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST, subhead: Police officers, involving)

## FIRE AND POLICE PERSONNEL—Cont.

- Police dog or horse
  - Assaulting . . . CR 521.321
  - Theft . . . CR 513.02
- Premises liability, action for . . . CV 617.07
- Specifications
  - Aggravated vehicular homicide, peace officer as victim of . . . CR 541.1414
  - Discharge of firearm at peace officer or correction officer . . . CR 541.1412

## FIREARMS

- Career criminal, use of firearm by . . . CR 523.132
- Concealed handgun license, falsification of or possessing revoked or suspended . . . CR 523.1211
- Defaced firearm
  - Generally . . . CR 523.201(A)(2)
  - Identification marks . . . CR 523.201(A)(1)
- Defined . . . CR 417.41
- Discharge of firearm at peace officer or correction officer specification . . . CR 541.1412
- Displayed, brandished or indicated possession of or used firearm specification (three year) . . . CR 541.145
- Falsification to purchase firearm or obtain concealed-handgun license . . . CR 521.13
- Gunshot wound, failure to report . . . CR 521.22(B)
- Habitation, discharging at or into . . . CR 523.161
- Liquor permit premises, illegal possession in . . . CR 523.121
- Minors, possession by
  - Furnishing to minors . . . CR 523.21
  - Underage purchase . . . CR 523.211(B)
- Motor vehicle, improper handling in . . . CR 523.16
- Prohibited premises, discharging on or near . . . CR 523.162
- Robbery with deadly weapon . . . CR 511.02
- School premises, on or near (See WEAPONS, DANGEROUS, subhead: School premises, firearms, weapons or ordinance on or near)
- Specifications
  - Complicity
    - One year . . . CR 541.141
    - Three year . . . CR 541.145
  - Discharge of firearm at peace officer or correction officer . . . CR 541.1412
  - Displayed, brandished or indicated possession of or used firearm (three year) . . . CR 541.145
  - One year . . . CR 541.141
  - Physical harm, deadly weapons and . . . CR 425.21
  - Three year . . . CR 541.145
  - Theft of . . . CR 513.02
  - Underage purchase . . . CR 523.211(B)
  - Violent career criminal, use of firearm by . . . CR 523.132

## FLAG BURNING

- Generally . . . CR 527.11

## FOOD, SALE OF

- Adulterated food . . . CV 450.01

## FOOD STAMP FRAUD

- Illegal use . . . CR 513.46(B); CR 513.46(C)



[References are to civil (CV) and criminal (CR) instruction numbers.]

**FOOD STAMP FRAUD—Cont.**

Trafficking . . . CR 513.46(A)  
WIC program benefits, illegal use of . . . CR  
513.46(B); CR 513.46(C)

**FORCE**

Defined . . . CR 521.04

**FORFEITURE**

Diminishing or interfering with forfeitable property  
. . . CR 581.07  
Drug offense conviction, pursuant to . . . CR 525.42  
Gang activity, participation in . . . CR 523.44

**FORGERY**

Generally . . . CR 513.31(A)  
Identification cards . . . CR 513.31(B)

**FRAUD**

Generally . . . CV 449.01  
Bad checks, passing of . . . CR 513.11  
Concluding instructions . . . CV 449.17  
Credit cards, misuse of . . . CR 513.21  
Creditors, defrauding of . . . CR 513.45  
Damages . . . CV 449.15  
Defense of *caveat emptor* in real estate sales . . . CV  
449.13  
Defined . . . CV 449.01  
Disclosure by person with duty to speak . . . CV  
449.11  
Elements . . . CV 449.03  
Expert testimony on . . . CV 449.07  
Food stamps, involving (See FOOD STAMP FRAUD)  
Forgery  
    Generally . . . CR 513.31(A)  
    Identification cards . . . CR 513.31(B)  
Fraudulent purpose . . . CR 417.03  
Hostelry, defrauding of . . . CR 513.41  
Identity fraud . . . CR 513.49  
Impersonation of officer (See IMPERSONATION OF  
OFFICER)  
Insurance fraud  
    Generally . . . CR 513.47  
    Agent, by . . . CV 709.55  
Investigation and inspection, duty of . . . CV 449.09  
Livery, defrauding of . . . CR 513.41  
Medicaid fraud  
    Generally . . . CR 513.40  
    Medicaid eligibility fraud . . . CR 513.401  
    Value . . . CR 425.23  
Non-fraudulent types of representations . . . CV 449.05  
Real estate sales, *caveat emptor* in . . . CV 449.13  
Records tampering . . . CR 513.42  
Securing of writings by deception . . . CR 513.43  
Securities claims  
    Common law claims for relief . . . CV 541.09  
    Sales fraud, liability of seller for . . . CV 541.01  
Simulation, criminal . . . CR 513.32  
Slugs, making or using . . . CR 513.33  
Special property, value and . . . CR 425.23  
Telecommunications fraud . . . CR 513.05  
Tortious interference with expectancy of inheritance, as  
. . . CV 453.07  
Trademark counterfeiting . . . CR 513.34

**FRAUD—Cont.**

Value and special property . . . CR 425.23  
Will contests . . . CV 633.07  
Worker's compensation  
    Generally . . . CR 513.48  
    Value . . . CR 425.23

**FUNCTIONALLY IMPAIRED PERSONS**

Failure to provide for . . . CR 503.16

**G****GAMBLING**

Generally . . . CR 515.02  
Bingo games  
    Amusement (legal) games  
        Prohibited games, conducting of . . . CR 515.12  
        Prohibited operators . . . CR 515.11  
        Record violations . . . CR 515.10(A); CR  
        515.10(C)  
        Rules violations . . . CR 515.09  
    Instant bingo conduct, illegal  
        Generally . . . CR 515.091  
        Owner or lessor, by . . . CR 515.094  
        Veteran's organization, fraternal organization or  
        sporting organization, by . . . CR 515.13  
    Non-amusement (illegal) games . . . CR 515.07; CR  
    515.12  
    Operating as distributor, illegally . . . CR 515.081  
    Operating as manufacturer, illegally . . . CR  
    515.082  
    Prohibited games (for amusement only) . . . CR  
    515.12  
    Raffle conduct, illegal . . . CR 515.092  
Casino-related crimes . . . CR 515.15  
Cheating  
    Before July 1, 1996 . . . CR 515.05  
    On or after July 1, 1996 . . . CR 515.05(A)  
Game of chance defined . . . CR 515.07  
Gaming, public . . . CR 515.04  
House of gambling, operation of . . . CR 515.03  
Raffle conduct, illegal . . . CR 515.092  
Record violations in legal games . . . CR 515.10(A);  
CR 515.10(C); CR 515.10(I)  
Scheme of chance defined . . . CR 515.07  
Skill-based amusement machine prohibited conduct  
. . . CR 515.06  
Sporting events, corruption of  
    Before July 1, 1996 . . . CR 515.06  
    On or after July 1, 1996 . . . CR 515.05(B)

**GAMING (See also GAMBLING)**

Public gaming . . . CR 515.04  
Raffle, illegal conduct of . . . CR 515.092

**GANG OFFENSES**

Participation in criminal gang  
    Generally . . . CR 523.42  
    Forfeiture for . . . CR 523.44  
    Specification . . . CR 541.142

[References are to civil (CV) and criminal (CR) instruction numbers.]

## **GASOLINE, FAILURE TO MAKE FULL PAYMENT**

Theft or fraud, value and special property . . . CR 513.02

## **GENERAL INSTRUCTIONS**

Generally . . . CR 101.47; CR 405.03; CV 101.47  
 Advisory instructions . . . CR 101.57; CV 101.57  
 Brevity, importance of . . . CR 101.73; CV 101.73  
 Burden of proof . . . CR 405.05; CV 303.03  
 Cautionary instructions . . . CR 101.57; CV 101.57  
 Civil case, results in . . . CR 405.09  
 Civil Rules . . . CV 101.45  
 Completeness and accuracy, necessity for . . . CR 101.69; CV 101.69  
 Concluding instructions . . . CR 101.59; CR 425.01; CV 101.59  
 Criminal Rules . . . CR 101.45  
 Defined . . . CR 101.47; CV 101.47  
 Delivery . . . CR 101.79; CR 405.01; CV 101.79  
 Disputed issues . . . CR 101.53; CV 101.53  
 Guidelines for . . . CR 101.65 *et seq.*; CV 101.65 *et seq.*  
 Impartiality and fairness, necessity for . . . CR 101.77; CV 101.77  
 Law, explanation of . . . CR 101.55; CV 101.55  
 Legal terms and expressions, defining . . . CR 101.65; CV 101.65  
 Logical sequence, importance of . . . CR 101.67; CV 101.67  
 Objections after . . . CR 101.63; CV 101.63  
 Objectivity, necessity for . . . CR 101.77; CV 101.77  
 Ordinary and understandable language, use of . . . CR 101.71; CR 101.81; CV 101.71; CV 101.81  
 Pertinence of . . . CR 101.69; CV 101.69  
 Reasonable doubt . . . CR 405.07  
 Repetition, importance of . . . CR 101.73; CV 101.73  
 Requests after . . . CR 101.63; CV 101.63  
 Special requests . . . CR 101.75; CV 101.75  
 Tailoring to individual case . . . CR 101.75; CV 101.75  
 Undisputed facts . . . CR 101.51; CV 101.51  
 Undisputed issues . . . CR 101.49; CV 101.49  
 Verdict forms and instructions . . . CR 101.59; CR 425.33; CV 101.59  
 Written instructions . . . CR 101.61; CV 101.61

## **GIFTS**

Condition of return, gift upon . . . CV 637.11  
 Defined . . . CV 637.01  
 Elements of valid gift . . . CV 637.05  
 Mortgage or money represented by mortgage, gift of . . . CV 637.09  
 Presumption of acceptance . . . CV 637.03  
 Proof required . . . CV 637.07

## **GOVERNMENTAL LIABILITY**

Buildings or grounds, failure to maintain . . . CV 425.07  
 Damages . . . CV 425.15  
 Defenses . . . CV 425.11  
 Employees acting in proprietary function, negligence of . . . CV 425.03

## **GOVERNMENTAL LIABILITY—Cont.**

Ice and snow accumulations, failure to remove . . . CV 425.05  
 Immunity for discretionary functions . . . CV 425.11  
 Motor vehicle, negligent operation of . . . CV 425.01  
 Negligence  
   Buildings or grounds, failure to maintain . . . CV 425.07  
   Employees acting in proprietary function . . . CV 425.03  
   Ice and snow accumulations, failure to remove . . . CV 425.05  
   Motor vehicle, operation of . . . CV 425.01  
   Roads and bridges, maintenance of . . . CV 425.05  
 Roads and bridges, improper maintenance of . . . CV 425.05  
 Statute of limitations . . . CV 425.13  
 Statutes, under specific . . . CV 425.09

## **GRAND JURIES**

Instructions to . . . CR 301.07  
 Oath  
   Court reporters . . . CR 301.05  
   Jurors . . . CR 301.03  
 Qualification . . . CR 301.01

## **GUARANTEES**

Affirmative defenses . . . CV 509.05  
 Damages . . . CV 509.07  
 Defined . . . CV 509.01  
 Liability of parties . . . CV 509.03

## **GUILT**

Evidence of consciousness of . . . CR 409.13

# **H**

## **HARASSMENT**

Hunters, of . . . CR 551.07  
 Inmate, by . . . CR 521.38  
 Sexual harassment, employment discrimination claims involving  
   Hostile work environment . . . CV 533.17  
   Loss of tangible job benefit . . . CV 533.15  
 Telecommunications, via . . . CR 517.21(A); CR 517.21(B)

## **HAZING**

Generally . . . CR 503.31

## **HEIRS**

Determination of . . . CV 701.15

## **HOMICIDE**

Anger defense . . . CR 421.11  
 Drugs, while under influence of; defense . . . CR 421.11  
 Intoxication defense . . . CR 421.11  
 Manslaughter (See MANSLAUGHTER)  
 Murder (See MURDER)  
 Negligent . . . CR 503.05  
 Pregnancy, unlawful termination of (See PREGNANCY, UNLAWFUL TERMINATION OF)  
 Reckless . . . CR 503.041



[References are to civil (CV) and criminal (CR) instruction numbers.]

## **HOMICIDE—Cont.**

Vehicular (See VEHICULAR HOMICIDE)

## **HOSPITALS**

Medical negligence claim against . . . CV 417.15

## **HOTELS (See INNKEEPERS)**

## **HUMAN TRAFFICKING**

Generally . . . CR 505.32; CR 541.1422

## **HUNTING OFFENSES (See WILDLIFE VIOLATIONS)**

## **HUSBAND AND WIFE**

Adultery, proof of . . . CV 701.05

Bigamy . . . CR 519.01

Burden of proof

Adultery . . . CV 701.05

Support claim . . . CV 701.03

Common law marriage . . . CV 701.15

Credit of husband, goods purchased on . . . CV 701.13

Damage claims, denial of joinder of . . . CV 315.27

Family offenses (See FAMILY OFFENSES)

Heirs, determination of . . . CV 701.15

Liability

Negligence of wife, liability of husband for . . . CV 701.09

Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)

Negligence of wife, liability of husband for . . . CV 701.09

## **HYPOTHETICAL QUESTIONS**

Expert witnesses, of . . . CR 409.21; CV 309.11

# **I**

## **IDENTITY FRAUD**

Generally . . . CR 513.49

## **IMPERSONATION OF OFFICER**

Generally . . . CR 513.44; CR 521.51(B)

Arrest or search, in . . . CR 521.51(C)

Offense, in commission of . . . CR 521.51(D); CR 521.51(E)

## **IMPROPER QUESTIONS**

Generally . . . CV 309.23

## **INDEPENDENT CONTRACTORS**

Agency liability . . . CV 423.07

## **INFECTIOUS AGENTS**

Improper handling . . . CR 517.47

## **INFERENCES**

Defined . . . CR 409.01; CV 305.01

## **INNKEEPERS**

Defrauding of hostelry . . . CR 513.41

Guest defined . . . CV 415.03

Inn defined . . . CV 415.01

Loss of guest's property, liability for

Generally . . . CV 415.05

Checkout, after . . . CV 415.09

## **INNKEEPERS—Cont.**

Loss of guest's property, liability for—Cont.

Negligence by guest . . . CV 415.11

Prima facie case, proof of loss as . . . CV 415.07

## **INSANITY DEFENSE**

Burden of proof . . . CR 421.29

Concluding instructions . . . CR 421.29

Defined . . . CR 421.25

Intoxication, voluntary . . . CR 421.27

Temporary insanity . . . CR 421.27

Types of . . . CR 421.27

## **INSTRUCTIONS (GENERALLY)**

Advisory instructions . . . CR 101.57; CV 101.57

Appeal on instructions

Generally . . . CR 101.15; CV 101.15

Error and prejudice . . . CR 101.17; CV 101.17

Cautionary instructions . . . CR 101.57; CV 101.57

Concluding instructions . . . CR 101.59; CR 425.01; CV 101.59

Defined . . . CR 101.01; CV 101.01

Deliberations, during (See DELIBERATIONS, INSTRUCTIONS DURING)

Delivery (See DELIVERY OF INSTRUCTIONS (GENERALLY))

Discharge instructions (See DISCHARGE OF JURY)

Error and prejudice distinguished . . . CR 101.17; CV 101.17

Evidential instructions . . . CR 101.33; CV 101.33

Final instructions (See FINAL INSTRUCTIONS)

General instructions (See GENERAL INSTRUCTIONS)

Judge, role of . . . CR 101.05; CV 101.05

Prejudice and error distinguished . . . CR 101.17; CV 101.17

Preliminary instructions (See PRELIMINARY INSTRUCTIONS)

Record requirements . . . CR 101.13; CV 101.13

Stages of trial, during . . . CR 101.03; CV 101.03

Standard instructions . . . CR 101.19; CV 101.19

Time of delivery

Generally . . . CR 101.07; CV 101.07

Stages of trial, throughout . . . CR 101.03; CV 101.03

Trial, before . . . CR 101.25; CV 101.25

Trial, during (See TRIAL, INSTRUCTIONS DURING)

Written instructions . . . CR 101.61; CV 101.61

## **INSURANCE**

Accident

Generally . . . CV 709.27

Accidental means distinguished

Generally . . . CV 709.31

Burden of proof . . . CV 709.33

Death from

Generally . . . CV 709.29

Accidental means distinguished . . . CV 709.33

Injury, burden of proof in . . . CV 709.25

Arm, loss of . . . CV 709.57

Arson . . . CV 709.11

Automobile insurance, intoxication exclusion in policy for . . . CV 709.39

Bad faith, refusal to pay or delay in paying claims as . . . CV 709.65

[References are to civil (CV) and criminal (CR) instruction numbers.]

**INSURANCE—Cont.**

Beneficiary, intended . . . CV 709.43  
 Burden of proof  
   Accidental injury . . . CV 709.25  
   Accident or disease, death from  
     Generally . . . CV 709.29  
     Accidental means distinguished . . . CV 709.33  
   Exempted risk defense . . . CV 709.37  
   False answer material . . . CV 709.51  
   False representation . . . CV 709.17  
   Limited purpose of proofs . . . CV 709.05  
   Loss . . . CV 709.01  
   Time of proof . . . CV 709.03  
   Unsound health . . . CV 709.45  
   Waiver . . . CV 709.01  
 Chimney fire . . . CV 709.23  
 Defense of exposure to unnecessary danger . . . CV 709.37  
 Disability, total  
   Defined . . . CV 709.59  
   Loss of arm . . . CV 709.57  
   Permanent, and . . . CV 709.61  
 Disease  
   Generally . . . CV 709.27  
   Death from . . . CV 709.29  
 Explosion, loss by . . . CV 709.13  
 Exposure to unnecessary danger  
   Generally . . . CV 709.35  
   Exempted risk, as . . . CV 709.37  
 False representation . . . CV 709.17  
 Fire, loss by  
   Generally . . . CV 709.13  
   Arson . . . CV 709.11  
   Chimney fire . . . CV 709.23  
   Proof of loss  
     Generally . . . CV 709.01  
     Limited purpose of proofs . . . CV 709.05  
   Total loss . . . CV 709.15  
   Vacant and unoccupied premises . . . CV 709.09  
 Fraud  
   Generally . . . CR 513.47  
   Agent, by . . . CV 709.55  
 Good faith in processing insurance claim, failure to act in . . . CV 709.65  
 Health of insured, representations of  
   False answer material, burden of proving . . . CV 709.51  
   Good health . . . CV 709.53  
   Sound health . . . CV 709.47  
   Unsound health, burden of proving . . . CV 709.45  
 Insurable interest . . . CV 709.19  
 Intoxication exclusion in automobile policy . . . CV 709.39  
 Loss, proof of  
   Generally . . . CV 709.01  
   “Earliest practical moment” requirement . . . CV 709.07  
   Limited purpose of proofs . . . CV 709.05  
   Time of proof . . . CV 709.03  
 Sanity, presumption of . . . CV 709.49  
 Steamboat, on . . . CV 709.21  
 Supplemental actions . . . CV 709.63  
 Theft defined . . . CV 709.41

**INSURANCE—Cont.**

Title insurance agents, violations by . . . CV 525.21  
 Waiver, proof of . . . CV 709.01

**INTENTIONAL TORT CLAIMS**

Allocation of damages, multiple defendants, interrogatories required  
   Generally . . . CV 429.09  
   Other tortious conduct claims, with . . . CV 429.11  
 Employer intentional torts . . . CV 537.09

**INTERPRETERS**

Civil trials, use in . . . CV 301.13  
 Criminal trials, use in . . . CR 401.29

**INTERROGATORIES**

Generally . . . CR 101.39; CV 101.39; CV 309.07; CV 321.01  
 Advisory juries . . . CR 101.37; CV 101.37  
 Answers to, acceptance of . . . CR 101.43; CV 101.43  
 Failure to answer; instructions during deliberations . . . CV 319.07  
 Intentional tort claims; allocation of damages, multiple defendants  
   Generally . . . CV 429.09  
   Other tortious conduct claims, with . . . CV 429.11  
 Narrative response interrogatories . . . CR 101.41; CV 101.41  
 Negligence actions  
   Comparative fault (See COMPARATIVE FAULT, subhead: Interrogatories on future damages)  
   Comparative negligence (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)  
   Medical . . . CV 417.19  
   Professional, non-medical . . . CV 421.07  
 Product liability . . . CV 451.23  
 Special verdicts . . . CR 101.37; CV 101.37

**INTIMIDATION**

Generally . . . CR 521.03  
 Attorney, of . . . CR 521.04  
 Defined . . . CR 521.04  
 Ethnic intimidation . . . CR 527.12  
 Victim, of . . . CR 521.04  
 Witness, of . . . CR 521.04

**INTOXICANTS**

Abuse of . . . CR 525.31  
 Liability for service of  
   Generally . . . CV 413.01  
   Civil Damages Act, under . . . CV 413.07  
   Damages  
     Generally . . . CV 413.11  
     Civil Damages Act, under . . . CV 413.07  
   Minor, liability to . . . CV 413.13  
   Off-premises liability . . . CV 413.05  
   On-premises liability . . . CV 413.03  
   Social provider, of . . . CV 413.09  
 Trafficking in . . . CR 525.32

**INTOXICATION**

Defense of  
   Generally . . . CR 421.07  
   Homicide cases . . . CR 421.11



[References are to civil (CV) and criminal (CR) instruction numbers.]

**INTOXICATION—Cont.**

- Defense of—Cont.
  - Insanity defense . . . CR 421.27
  - Non-homicide cases . . . CR 421.09
  - Purpose and . . . CR 421.09 *et seq.*
- Homicide cases, defenses in . . . CR 421.11
- Insanity defense, as basis for . . . CR 421.27
- Insurance policy intoxication exclusion . . . CV 709.39
- Negligence claim . . . CV 401.17
- Purpose and . . . CR 421.09 *et seq.*
- Traffic offenses (See **ALCOHOL OFFENSES**, subhead: Traffic offenses)
- Watercraft and waterways violations (See **ALCOHOL OFFENSES**, subhead: Watercraft and waterways violations)
- Weapons use while intoxicated . . . CR 523.15

**INVOLUNTARY MANSLAUGHTER**

- Generally . . . CR 503.04

**ISSUES, PRESENTATION OF**

- Generally . . . CR 413.01
- Negligence (See **NEGLIGENCE**)
- Paternity claims . . . CV 705.01
- Robbery, aggravated; examples
  - Generally . . . CR 413.03
  - Lesser included offense, with . . . CR 413.05
- Time . . . CR 413.07
- Venue . . . CR 413.07

**J**

**JOINDER**

- Damage claims, denial in . . . CV 315.27

**JOINT TRIAL**

- Damages, separate claims for . . . CV 315.31

**JOINT VENTURES**

- Agency liability . . . CV 423.05

**JUDGES (GENERALLY)**

- Dereliction of duty by judicial officers . . . CR 521.44(B)
- Role in instructions . . . CR 101.05; CV 101.05

**JURIES AND JURORS (GENERALLY)**

- Admonitions to jury . . . CV 301.07
- Advisory juries . . . CR 101.37; CV 101.37
- Alternate jurors
  - Closing instructions regarding . . . CR 425.39; CV 317.05
  - Sample final instruction . . . CR 207.41
- Appreciation of service . . . CR 425.41
- Deadlocked jury . . . CR 429.09; CV 319.07
- Deliberations
  - Conduct during . . . CR 425.37
  - Instructions during (See **DELIBERATIONS, INSTRUCTIONS DURING**)
- Discharge of jury (See **DISCHARGE OF JURY**)
- Discussion of case after verdict . . . CR 425.41
- Foreperson, sample final instruction for . . . CR 207.35
- Grand juries (See **GRAND JURIES**)
- Jury view (See subhead: Scene visits)

**JURIES AND JURORS (GENERALLY)—Cont.**

- Notetaking by jurors . . . CR 401.19; CV 301.09
- Oath
  - Grand jurors . . . CR 301.03
  - Instructions before administration of . . . CV 301.01
  - Officer in charge during sequestration . . . CR 429.03
- Orientation of new jury . . . CR 401.07; CV 301.05
- Overnight adjournment . . . CV 317.09
- Paternity actions, duty in . . . CV 705.15
- Qualifying of jury
  - Grand jury . . . CR 301.01
  - Trial, instructions during . . . CR 401.01; CV 301.03
- Questions by jurors
  - Deliberations, during . . . CR 429.05
  - Sample final instructions . . . CR 207.37; CV 207.37
  - Trial, during . . . CR 401.21; CV 301.11
- Recess instructions
  - Generally . . . CR 401.11; CV 309.13
  - Extended recess and separate hearings . . . CR 401.13
  - Overnight adjournment . . . CV 317.09
- Scene visits
  - Generally . . . CR 401.15; CV 309.15
  - Eminent domain actions . . . CV 609.03
- Selection (See **VOIR DIRE**)
- Sequestration . . . CR 429.03
- Swearing in, instructions after . . . CR 401.09
- Voir dire (See **VOIR DIRE**)

**JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST**

- Arrest, resisting . . . CR 521.33
- Bribery
  - Generally . . . CR 521.02
  - Solicitation by public official, improper (See **SOLICITATION**, subhead: Compensation by public official, improper)
- Burn injury, failure to report . . . CR 521.22(E)
- Cable, failure to report unauthorized use of . . . CR 521.22(A)
- Civil rights
  - Deprivation of . . . CV 713.01
  - Interference with . . . CR 521.45
- Compounding of crime . . . CR 521.21
- Computer, cable, or telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)
- Confidential information, disclosure of . . . CR 521.24
- Death, failure to report knowledge of . . . CR 521.22(C); CR 521.22(D)
- Dereliction of duty (See **DERELICTION OF DUTY**)
- Escape (See **ESCAPE**)
- Evidence tampering . . . CR 521.12
- Failure to report crime
  - Computer, cable, or telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)
  - Felony . . . CR 521.22(A)
  - Gunshot or stab wound . . . CR 521.22(B)
- False reports, making of
  - Child abuse or neglect . . . CR 521.14



[References are to civil (CV) and criminal (CR) instruction numbers.]

## JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST—Cont.

False reports, making of—Cont.

Contamination . . . CR 527.24(C)

Falsification

Firearm offense . . . CR 521.13

Insurance claims . . . CV 709.17

Removal proceeding . . . CR 521.13

Theft offense . . . CR 521.13

Felony, failure to report . . . CR 521.22(A)

Gunshot wound, failure to report . . . CR 521.22(B)

Impersonation of officer (See IMPERSONATION OF OFFICER)

Inmate, harassment by . . . CR 521.38

Intimidation (See INTIMIDATION)

Obstruction

Justice . . . CR 521.32

Official business . . . CR 521.31

Official business, obstructing . . . CR 521.31

Perjury . . . CR 521.11

Police dog or horse, assaulting . . . CR 521.321

Police officers, involving

Dereliction of duty . . . CR 521.44(A); CR 521.44(B)

Failure to comply with order or signal . . . CR 521.331; CV 411.03

Impersonation of (See IMPERSONATION OF OFFICER)

Public contract, unlawful interest in . . . CR 521.42

Public employees, restrictions on present or former . . . CR 521.17

Public officials, involving

Dereliction of duty . . . CR 521.44(D); CR 521.44(E)

Disruption of activities of . . . CR 521.31

Restrictions on present or former officials . . . CR 521.17

Solicitation of compensation by, improper (See SOLICITATION, subhead: Compensation by public official, improper)

Retaliation . . . CR 521.05

Sham legal process, use of . . . CR 521.52

Stab wound, failure to report . . . CR 521.22(B)

Telecommunications property, failure to report unauthorized use of . . . CR 521.22(A)

Theft in office . . . CR 521.41

Weapons conveyed into detention facility . . . CR 521.35(A); CR 521.36

## JUVENILE DELINQUENCY

Contributing to delinquency or unruliness

Offenses before 1/1/2002 . . . CR 519.24

Offenses on or after 1/1/2002 . . . CR 519.24(B)(1); CR 519.24(B)(2)

Offenses on or after 1/1/2002 but before 7/31/2003 . . . CR 519.24(A)(3)

Offenses on or after 7/31/2003 but before 4/6/2017 . . . CR 519.24(A)(3)

Offenses on or after 4/6/2017 . . . CR 519.24(B)(3); CR 519.24(B)(4)

## K

### KIDNAPPING

Generally . . . CR 505.01(A)

Abduction . . . CR 505.02

Child enticement, criminal . . . CR 505.05

Child stealing . . . CR 505.04

Special circumstances . . . CR 505.01(B)

### KNOWINGLY ACTING

Defined . . . CR 417.11

## L

### LABOR RELATIONS (See also EMPLOYMENT RELATIONS)

Defamation of private figures involved in labor dispute . . . CV 431.05

Fair representation, union's duty of . . . CV 537.15

Management-labor disputes . . . CV 537.13

### LANDLORD AND TENANT

Eviction, residential (See EVICTION, RESIDENTIAL)

Mobile home parks (See MOBILE HOME PARKS)

Premises liability

Landlord (See PREMISES LIABILITY, subhead:

Landlord liability)

Tenant . . . CV 617.21

Rent, eviction for non-payment of

Generally . . . CV 613.01

Mobile home park tenant . . . CV 613.13

Security deposit, return of

Generally . . . CV 613.07

Mobile home park tenant . . . CV 613.33

### LAW, EXPLANATION OF

Deliberations, during . . . CR 429.07

General instructions, challenges in . . . CR 101.55; CV 101.55

### LAW OF INSTRUCTIONS

Generally . . . CR 101.01 *et seq.*; CV 101.01 *et seq.*

### LAYMAN'S OPINION

Generally . . . CR 409.19; CV 309.09

### LEMON LAW

Generally . . . CV 529.01

### LESSER INCLUDED OFFENSES

Concluding instructions

Generally . . . CR 425.09

Purpose of submitting . . . CR 425.11

Robbery, aggravated; examples . . . CR 413.05

### LIABILITY

Agency liability (See AGENCY LIABILITY)

Alcoholic beverages, service of (See INTOXICANTS, subhead: Liability for service of)

Animals, for (See ANIMALS, subhead: Liability for)

Employment relations (See EMPLOYMENT RELATIONS)

Governmental (See GOVERNMENTAL LIABILITY)

Guarantees, actions involving . . . CV 509.03



[References are to civil (CV) and criminal (CR) instruction numbers.]

**LIABILITY—Cont.****Husband and wife**

Negligence of wife, liability of husband for . . . CV 701.09

Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)

Innkeepers (See INNKEEPERS, subhead: Loss of guest's property, liability for)

Premises liability (See PREMISES LIABILITY)

Product liability (See PRODUCT LIABILITY)

Support, liability of husband for (See SPOUSAL SUPPORT, subhead: Liability of husband for)

Sureties (See SURETIES)

**LIKENESS, APPROPRIATION OF**

Invasion of privacy . . . CV 433.07

**LIMITED PURPOSE EVIDENCE**

Trial, instructions during . . . CR 401.23; CV 309.05

**LOITERING**

Solicitation, to engage in . . . CR 507.241

**M****MALICE**

Business relationship, tortious interference with . . . CV 453.01

Civil conspiracy; plaintiff's claim . . . CV 443.01

Contractual relationship, tortious interference with . . . CV 453.03

Defined . . . CV 439.01

Employment relations, tortious interference with . . . CV 453.05

Malicious combination defined for civil conspiracy claim . . . CV 443.01

Malicious prosecution

Civil malicious prosecution . . . CV 439.01

Criminal malicious prosecution . . . CV 439.03

Unfair competition by malicious litigation . . . CV 439.05

**MALICIOUS PROSECUTION**

Civil malicious prosecution . . . CV 439.01

Criminal malicious prosecution . . . CV 439.03

**MALPRACTICE**

Generally (See PROFESSIONAL NEGLIGENCE)

Medical (See MEDICAL NEGLIGENCE)

**MANSLAUGHTER**

Abortion manslaughter . . . CR 519.13(A); CR 519.13(B)

Involuntary . . . CR 503.04

Pregnancy, unlawful termination of

Involuntary manslaughter . . . CR 503.04

Voluntary manslaughter . . . CR 503.03

Vehicular . . . CR 503.06

Voluntary . . . CR 503.03

**MANUFACTURED HOME PARKS (See MOBILE HOME PARKS)****MASSAGE**

Advertising of, unlawful . . . CR 527.24

**MASSAGE—Cont.**

Establishments, prohibited activities for . . . CR 507.42

**MEDICAID FRAUD**

Generally . . . CR 513.40

Medicaid eligibility fraud . . . CR 513.401

Value and special property . . . CR 425.23

**MEDICAL EXPENSES**

Damage award limited to . . . CV 315.27

**MEDICAL INFORMATION**

Unauthorized disclosure of nonpublic medical information

Generally . . . CV 457.01

Inducement of . . . CV 457.03

**MEDICAL NEGLIGENCE**

Generally . . . CV 417.01

Agents and employees of physicians . . . CV 417.11

Chance of survival or recovery, loss of less-than-even . . . CV 417.17

Employees and agents of physicians . . . CV 417.11

Hospital as defendant . . . CV 417.15

Informed consent, lack of

Generally . . . CV 417.07

Defense, statutory . . . CV 417.09

Interrogatories . . . CV 417.19

Res ipsa loquitur . . . CV 417.05

Standards of care

Generally . . . CV 417.03

Physicians and surgeons . . . CV 417.13

**MENACING**

Generally . . . CR 503.22

Aggravated . . . CR 503.21

Stalking, by . . . CR 503.211

**MINORS (See also CHILDREN)**

Abortion performed on woman under 18, unlawful . . . CR 519.12(B); CR 519.121

Automobile, operation of

Generally . . . CV 407.09

Parent, guardian, or other responsible person, liability of . . . CV 411.79

Earnings, recovery for loss of . . . CV 407.21

Firearms, possession of

Furnishing to minor . . . CR 523.21

Underage purchase . . . CR 523.211(B)

Intoxicants, social provider's liability to minor for . . . CV 413.13

Sex offenses involving (See SEX OFFENSES)

**MISCARRIAGE**

Damages . . . CV 315.07

**MISCHIEF, CRIMINAL**

Generally . . . CR 509.07

**MISTAKE OF FACT**

Generally . . . CR 417.05

Contracts (See CONTRACTS)

**MISTRIAL**

Verdict, failure to reach; instructions during deliberations . . . CV 319.07

[References are to civil (CV) and criminal (CR) instruction numbers.]

## MOBILE HOME PARKS

### Damages, claim for

Park operator, by; violation of statutory obligations  
 . . . CV 613.17

### Resident, by

Illegal acts of park operator . . . CV 613.31  
 Obligation of park operator, violation of . . . CV  
 613.15  
 Prohibited conduct of park operator . . . CV  
 613.25

### Eviction

#### Holding over term

Owner . . . CV 613.21  
 Tenant . . . CV 613.23

Non-payment of rent . . . CV 613.13

#### Retaliatory conduct of park operator

Generally . . . CV 613.09  
 Affirmative defense . . . CV 613.11

#### Rules of park or safety code, violation of

First violation . . . CV 613.27  
 Second violation . . . CV 613.29

Termination of term resulting from sale of park  
 . . . CV 613.19

### Retaliatory conduct of park operator in eviction

Generally . . . CV 613.09  
 Affirmative defense . . . CV 613.11

Security deposit, claim for return of . . . CV 613.33

## MONEY LAUNDERING

Terrorism, in support of . . . CR 509.29

## MORTGAGES (See also RESIDENTIAL LENDING PRACTICES)

Conversion of chattel by mortgagee . . . CV 625.05

Gift of mortgage or money represented by mortgage  
 . . . CV 637.09

## MOTIVE

Proof of . . . CR 417.01

Transferred intent . . . CR 417.01

## MOTOR VEHICLES (See AUTOMOBILES AND OTHER MOTOR VEHICLES)

## MULTIPLE COUNTS

Concluding instructions . . . CR 425.07

## MULTIPLE PARTIES

General instruction . . . CV 311.03

Defendants, multiple (See DEFENDANTS (GENERAL))

## MURDER

Generally . . . CR 503.02

### Aggravated; death penalty

Sentencing phase . . . CR 503.011  
 Trial phase . . . CR 503.01

### Pregnancy, unlawful termination of

Generally . . . CR 503.02  
 Aggravated; death penalty . . . CR 503.01

# N

## NAME, APPROPRIATION OF

Invasion of privacy . . . CV 433.07

## NATURAL ASSETS

Eminent domain actions, valuation in . . . CV 609.17

## NECESSITY

Defense of . . . CR 421.13

## NEGLECT (See ABUSE AND NEGLECT)

## NEGLIGENCE

Generally . . . CV 401.01

Accident, defense of . . . CR 421.01

Act of God . . . CV 401.25

Assault, negligent . . . CR 503.14

### Automobile negligence

Affirmative defenses . . . CV 411.73

Assured clear distance . . . CV 411.19

Care, degree of . . . CV 411.01

Damages . . . CV 315.19

Governmental liability for negligent operation of motor vehicle . . . CV 425.01

Guardian, liability of . . . CV 411.79

Illuminating devices, failure to use . . . CV 411.71

Lights, failure to display . . . CV 411.71

Loss of consciousness or other medical emergency  
 . . . CV 401.21

Marked lanes, failure to drive in . . . CV 411.37

Matter of law, distinguished from negligence as  
 . . . CV 411.01

Minor, liability of parent, guardian, or other responsible person . . . CV 411.79

Order or signal of police officer, failure to comply with . . . CV 411.03

### Owner of vehicle, liability of

Generally . . . CV 411.75

Passenger not operator, owner as . . . CV 411.77

Parent, guardian, or other responsible person, liability of . . . CV 411.79

Passenger not operator, liability of owner when  
 . . . CV 411.77

Per se negligence . . . CV 411.01

Private property, traffic rules on . . . CV 411.07

Reasonable control of vehicle . . . CV 411.15

Safety of persons or property, operation in willful or wanton disregard of . . . CV 411.13

### Tire or mechanical failure

Generally . . . CV 401.23

Affirmative defenses . . . CV 411.73

Unsafe vehicle, operation of . . . CV 411.69

### Blackout as excuse

Generally . . . CV 401.21

Affirmative defenses for automobile negligence  
 . . . CV 411.73

### Burden of proof of defenses

Act of God . . . CV 401.25

Loss of consciousness or other medical emergency  
 . . . CV 401.21

### Causation (See subhead: Proximate cause)

Caution signs, effect of presence of . . . CV 401.19

### Children, actions by or involving

Generally . . . CV 407.01

Administrator, action by . . . CV 407.17

Child under 7, negligence by . . . CV 407.03

Comparative negligence; duty of parents . . . CV  
 407.15



[References are to civil (CV) and criminal (CR) instruction numbers.]

## NEGLIGENCE—Cont.

### Children, actions by or involving—Cont.

- Concluding instructions . . . CV 407.13
- Damages . . . CV 407.17
- Duty of parents . . . CV 407.15
- Imputation of parents' negligence . . . CV 407.11
- Ordinary care (See subhead: Ordinary care)
- Statutory violation by child . . . CV 407.07
- Tort of child, liability of parents for . . . CV 407.19

### Common carriers . . . CV 401.35

### Comparative negligence (See COMPARATIVE NEGLIGENCE)

### Conclusions

- Children, actions by or involving . . . CV 407.13
- Comparative negligence (See COMPARATIVE NEGLIGENCE)
- Defendant negligence, without . . . CV 406.03; CV 406.05
- Plaintiff negligence, without . . . CV 406.01; CV 406.03

### Concurrent but independent negligence . . . CV 401.39

### Counterclaim, submission of . . . CV 311.07

### Criminal negligence defined . . . CR 417.19

### Custom . . . CV 401.03

### Damages

- Generally (See DAMAGES)
- Interrogatories in comparative negligence actions (See COMPARATIVE NEGLIGENCE, subhead: Interrogatories on future damages)
- Submission of causation and/or damage only . . . CV 311.05

### Dangerous substances, ordinary care involving . . . CV 401.11

### Defenses

- Accident, unavoidable . . . CR 421.01
- Affirmative defenses for automobile negligence . . . CV 411.73
- Burden of proof (See subhead: Burden of proof of defenses)
- Informed consent, statutory defense to lack of . . . CV 417.09
- Professional, non-medical; defense of client negligence . . . CV 421.05

### Defined . . . CR 417.19; CV 401.01

### Disability, person under . . . CV 401.09

### Due care, lapse of . . . CR 417.19

### Duty to look . . . CV 401.05

### Emergency, sudden

- Affirmative defenses for automobile negligence . . . CV 411.73
- Automobile negligence, affirmative defenses for . . . CV 411.73
- Care, duty of . . . CV 401.13
- Legal excuse . . . CV 401.15

### Emotional distress, infliction of . . . CV 429.07

### Foreseeability

- Generally . . . CR 417.19; CV 401.07
- Affirmative defenses for automobile negligence . . . CV 411.73
- Loss of consciousness or other medical emergency . . . CV 401.21

### Governmental liability (See GOVERNMENTAL LIABILITY)

## NEGLIGENCE—Cont.

### Guests at inns, loss of property by . . . CV 415.11

### Homicide, negligent . . . CR 503.05

### Independent negligence . . . CV 401.39

### Inference of . . . CV 401.33

### Intoxication, lack of ordinary care due to . . . CV 401.17

### Issues, presentation of

#### General instruction . . . CV 311.01

#### Causation

- Separate and distinct element from negligence . . . CV 311.11

#### Submission of . . . CV 311.05

#### Counterclaim . . . CV 311.07

#### Damages . . . CV 311.05

#### Multiple parties . . . CV 311.03

#### Per se negligence . . . CV 311.09

#### Submission of causation and/or damage only . . . CV 311.05

#### Violations of statute . . . CV 311.09

### Loss of consciousness or other medical emergency

#### Generally . . . CV 401.21

#### Affirmative defenses in automobile negligence . . . CV 411.73

### Medical (See MEDICAL NEGLIGENCE)

### Ordinary care

#### Generally . . . CV 401.01

#### Caution signs, presence of . . . CV 401.19

#### Children, care of

##### Generally . . . CV 407.01

##### Child under 7 . . . CV 407.03

##### Duty of parents . . . CV 407.15

##### Measure of care by child . . . CV 407.05

##### Tort liability of parents . . . CV 407.19

#### Common carriers . . . CV 401.35

#### Dangerous substances . . . CV 401.11

#### Defined . . . CV 401.01

#### Duty to look . . . CV 401.05

#### Persons under disability . . . CV 401.09

#### Sudden emergency . . . CV 401.13

### Per se negligence

#### Automobile negligence . . . CV 411.01

#### Issues, presentation of . . . CV 311.09

### Product liability, common law negligence in . . . CV 451.11 *et seq.*

### Professional negligence

#### Generally (See PROFESSIONAL NEGLIGENCE)

#### Medical negligence (See MEDICAL NEGLIGENCE)

### Proximate cause

#### Generally . . . CV 405.01

#### Intervening and superseding cause . . . CV 405.05

#### Remote cause or condition . . . CV 405.03

#### Separate and distinct element from negligence, as . . . CV 311.11

#### Submission of issue . . . CV 311.05

### Reckless conduct . . . CV 401.41

### Res ipsa loquitur

#### Generally . . . CV 401.33

#### Medical negligence . . . CV 417.05

### Securities, common law claims for relief concerning . . . CV 541.09

### Substantial negligence defined . . . CR 417.19

[References are to civil (CV) and criminal (CR) instruction numbers.]

**NEGLIGENCE—Cont.**

Under the influence, lack of ordinary care while . . . CV 401.17

Wife's negligence, liability of husband for . . . CV 701.09

Willful or wanton misconduct . . . CV 401.41

**NEGOTIABLE INSTRUMENTS**

Theft, value . . . CR 425.23

**NUCLEAR WEAPONS (See RADIOLOGICAL OR NUCLEAR WEAPONS)****NUDITY**

Child endangerment . . . CR 519.22

Defined . . . CR 417.39

Nudity-oriented materials or performances

Impaired person in, use of . . . CR 507.323

Minors in, use of . . . CR 507.323

**NUISANCE**

Absolute

Abnormally dangerous activity . . . CV 621.03

Intentional acts . . . CV 621.05

Statutory violation . . . CV 621.01

"Coming to the nuisance" as bar to complaint . . . CV 621.11

Damages, compensatory . . . CV 621.13

Qualified . . . CV 621.07

Regulated activities, exceptions for . . . CV 621.09

**O****OBJECTIONS TO INSTRUCTIONS**

General instructions, after . . . CR 101.63; CV 101.63

**OBSCENITY, PANDERING OF**

Generally . . . CR 507.32

Impaired person, obscenity involving . . . CR 507.321

Minors, obscenity involving . . . CR 507.321

**OBSTRUCTION OF JUSTICE**

Generally . . . CR 521.32

**OFFICIAL BUSINESS, DISRUPTION OF**

Generally . . . CR 521.31

**ORDNANCE, DANGEROUS**

Biological weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Chemical weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Courthouse, in . . . CR 523.123; CR 523.123(A); CR 523.123(B)

Explosive devices

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Failure to secure . . . CR 523.19

Manufacturing or processing explosives . . . CR 523.17

Radiological or nuclear weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

**ORDNANCE, DANGEROUS—Cont.**

School premises, on or near (See WEAPONS, DANGEROUS, subhead: School premises, firearms, weapons or ordnance on or near)

Theft . . . CR 513.02

Unlawful possession . . . CR 523.17

**OWNERSHIP**

Defined . . . CR 417.15

**P****PANIC, INDUCING**

Generally . . . CR 517.31

Discharging firearm at or into school with intent to cause harm or panic . . . CR 523.161

False alarms, making of . . . CR 517.32

**PAROLE OFFICER**

Defined . . . CR 521.24

**PATERNITY**

Generally . . . CV 705.01

Competency of witnesses . . . CV 705.11

Concluding instructions . . . CV 705.13

Exhibiting of child . . . CV 705.09

Issues, presentation of . . . CV 705.01

Jury's duty . . . CV 705.15

Presumption of paternity and burden of proof

Defendant . . . CV 705.05

Person other than defendant . . . CV 705.03

Serological tests . . . CV 705.07

Verdict . . . CV 705.13

**PATIENTS**

Abuse and neglect

Generally . . . CR 503.34

False complaint, filing of . . . CR 503.35

Endangerment . . . CR 503.341

**PERJURY**

Generally . . . CR 521.11

**PERSONAL INJURY**

Automobile accident causing injury, leaving scene of . . . CR 749.02; CR 749.021

Damages (See DAMAGES)

Hunters, injury of persons or property by . . . CR 551.03

Insurance claim, burden of proof in . . . CV 709.25

**PERSONAL PROPERTY**

Automobile accident damaging property, leaving scene of . . . CR 749.021

Conversion (See CONVERSION)

Damages (See DAMAGES)

Damaging or endangering, criminal . . . CR 509.06

Eminent domain actions, valuation of fixtures in . . . CV 609.15

Secured transactions (See SECURED TRANSACTIONS (U.C.C.))

Vandalism . . . CR 509.05(B)



[References are to civil (CV) and criminal (CR) instruction numbers.]

## PHARMACISTS (See DRUGGISTS)

## PHYSICAL HARM

Specification in concluding instructions . . . CR 425.21

## PHYSICIANS

Negligence (See MEDICAL NEGLIGENCE)

## PIRACY

Motion picture piracy . . . CR 513.07

## POLICE AND FIRE PERSONNEL (See FIRE AND POLICE PERSONNEL)

## POLYGRAPH TESTS

Generally . . . CR 409.23

## POSSESSION

Generally . . . CR 417.21

Adverse possession . . . CV 601.03

Biological weapons . . . CR 509.26

Chemical weapons . . . CR 509.26

Conversion (See CONVERSION)

Defined . . . CR 417.21

Drug possession (See DRUG OFFENSES)

Exotic animals . . . CR 551.13

Explosive devices . . . CR 509.26

Firearms . . . CR 523.12 *et seq.*

Joint possession . . . CR 417.21

Radiological or nuclear weapons . . . CR 509.26

Secured transactions

Perfection of interest by possession . . . CV 517.09

Right of secured party to take possession . . . CV 517.15

Tools, criminal . . . CR 523.24

Transfer of, landlord liability at or after . . . CV 617.15; CV 617.17

Unauthorized device . . . CR 513.041

Weapons, dangerous . . . CR 523.12 *et seq.*

Wrongful possession . . . CV 447.01

## PREEXISTING CONDITION

Damages, acceleration or aggravation of prior injury or condition . . . CV 315.15

## PREGNANCY

Pregnant victim . . . CR 541.1423

Unlawful termination (See PREGNANCY, UNLAWFUL TERMINATION OF)

## PREGNANCY, UNLAWFUL TERMINATION OF

Homicide, as

Negligent homicide . . . CR 503.05

Reckless homicide . . . CR 503.041

Vehicular homicide

Generally . . . CR 503.07

Aggravated . . . CR 503.06

Manslaughter, as

Involuntary . . . CR 503.04

Voluntary . . . CR 503.03

Murder, as

Generally . . . CR 503.02

Aggravated; death penalty . . . CR 503.01

## PREJUDICE IN INSTRUCTIONS

Appeal, as basis for . . . CR 101.17; CV 101.17

## PRELIMINARY INSTRUCTIONS

Generally . . . CR 101.27; CV 101.27

Issues raised after . . . CR 101.29; CV 101.29

Repetition in final instructions . . . CR 101.29; CV 101.29

Sample instructions . . . CR 205.01; CV 205.01

Trial, before . . . CR 101.25; CV 101.25

## PREMISES LIABILITY

Generally . . . CV 617.01

Business visitors . . . CV 617.03

Fire/police personnel . . . CV 617.07

Frequenters . . . CV 617.11

Invitees . . . CV 617.03

Landlord liability

Generally . . . CV 617.19

Conditions arising after transfer of possession . . . CV 617.15

Conditions arising at transfer of possession . . . CV 617.17

Licensees . . . CV 617.09

Recreational users . . . CV 617.13

Social guests . . . CV 617.05

Tenant liability . . . CV 617.21

Trespassers . . . CV 617.09

## PREPONDERANCE OF EVIDENCE

Generally . . . CR 417.29; CV 303.05

Sample final instructions . . . CR 207.21; CV 207.05

## PRESUMPTIONS

Generally . . . CV 309.01

Evidential . . . CR 417.33

## PRIMA FACIE EVIDENCE

Generally . . . CR 417.31; CV 309.03

Bailment agreement, violation of . . . CV 629.03

Innkeeper's loss of guest's property . . . CV 415.07

## PRIOR CONVICTIONS OR OFFENSES

Concluding instructions . . . CR 425.15

Sample final instructions . . . CR 207.09

Trial, instructions during . . . CR 401.25; CR 409.11

## PRIOR INJURY OR CONDITION

Damages, acceleration or aggravation of condition . . . CV 315.15

## PRISONS, PRISONERS AND DETAINEES

Aggravated riot . . . CR 517.02(B)

Dereliction of duty by detention facility officers . . . CR 521.44(C)

Discharge of firearm at correction officer specification . . . CR 541.1412

Escape (See ESCAPE)

Harassment by inmate . . . CR 521.38

Weapons conveyed into detention facility

Generally . . . CR 521.35(A); CR 521.36

Possession by detainee . . . CR 523.131

## PRIVACY, INVASION OF

Embarrassing private facts, public disclosure of . . . CV 433.03

False light . . . CV 433.05

Intrusion upon seclusion of another . . . CV 433.01



[References are to civil (CV) and criminal (CR) instruction numbers.]

**PRIVACY, INVASION OF—Cont.**

Name or likeness, appropriation of . . . CV 433.07  
Publicity, right of . . . CV 433.09

**PRIVATE PROPERTY**

Traffic rules on . . . CV 411.07

**PROBATE**

Defined . . . CV 633.01  
Will contests (See WILL CONTESTS)

**PRODUCT LIABILITY**

Common law negligence . . . CV 451.11 *et seq.*  
Damages . . . CV 451.21  
Defenses, affirmative . . . CV 451.19  
Design or formulation defect  
    Common law negligence . . . CV 451.11  
    Statutory defect . . . CV 451.05  
Failure to warn  
    Common law negligence . . . CV 451.15  
    Statutory violation . . . CV 451.07  
Implied warranty, common law breach of . . . CV 451.17  
Interrogatories . . . CV 451.23  
Manufacturing or construction defect  
    Common law negligence . . . CV 451.13  
    Statutory defect . . . CV 451.03  
Non-conformance to representation . . . CV 451.09  
Statutory . . . CV 451.01 *et seq.*

**PROFESSIONAL NEGLIGENCE**

Generally . . . CV 421.01  
Defense of client negligence . . . CV 421.05  
Interrogatories . . . CV 421.07  
Medical negligence (See MEDICAL NEGLIGENCE)  
Standards of care . . . CV 421.03

**PROMISSORY ESTOPPEL**

Contract claims . . . CV 501.31  
Employment contracts . . . CV 537.03

**PROPERTY**

Depriving of . . . CR 417.13  
Hunters, injury of persons or property by . . . CR 551.03  
Ownership . . . CR 417.15  
Personal property (See PERSONAL PROPERTY)  
Real property (See REAL PROPERTY)  
Special property, value and . . . CR 425.23  
Unauthorized use of . . . CR 513.04  
Value of property destroyed or stolen, concluding instructions on . . . CR 425.23

**PROSTITUTION**

Generally . . . CR 507.25  
Compelling . . . CR 507.21  
Procuring . . . CR 507.23  
Promoting . . . CR 507.22  
School, in proximity of . . . CR 541.1421  
Soliciting  
    Generally . . . CR 507.24  
    Loitering to engage in . . . CR 507.241

**PROTECTION ORDERS**

Violation of . . . CR 519.27

**PROXIMATE CAUSE**

Negligent acts (See NEGLIGENCE)  
Sample final instructions . . . CV 207.19

**PUBLIC ADMINISTRATION, OFFENSES**

AGAINST (See JUSTICE AND PUBLIC ADMINISTRATION, OFFENSES AGAINST)

**PUBLIC AMUSEMENT**

Criminal trespass on place of . . . CR 511.23

**PUBLIC INDECENCY**

Generally . . . CR 507.09

**PUBLICITY, RIGHT OF**

Invasion of privacy . . . CV 433.09

**PUBLIC PEACE, OFFENSES AGAINST**

Crowd safety statute, violation of . . . CR 517.40  
Disorderly conduct  
    After 3/23/19 . . . CR 517.11(A); CR 517.11(B)  
    After 1/25/02 but before 3/23/19 . . . CR 517.11(A); CR 517.11(B)  
    Riot (See RIOT)  
Emergency, misconduct at . . . CR 517.13  
False alarms, making of . . . CR 517.32  
Harassment via telecommunications . . . CR 517.21(A); CR 517.21(B)  
Infectious agents, improper handling of . . . CR 517.47  
Lawful meeting, disturbing of . . . CR 517.12  
Panic, inducing (See PANIC, INDUCING)  
Public transportation, misconduct involving . . . CR 517.41  
Riot (See RIOT)  
Telecommunications harassment . . . CR 517.21(A); CR 517.21(B)  
Violence, inciting to . . . CR 517.01

**PUBLIC SERVICES, DISRUPTION OF**

Generally . . . CR 509.04

**PURPOSE, ELEMENT OF**

Coma or blackout, acts committed while in . . . CR 417.07  
Deadly weapon, use of . . . CR 417.01  
Fraudulent purpose . . . CR 417.03  
Intoxication and . . . CR 421.09 *et seq.*  
Mistake of fact, acting under . . . CR 417.05  
Motive, proof of . . . CR 417.01  
Purposely acting . . . CR 417.01  
Transfer of purpose . . . CR 417.09

**PYRAMID SCHEMES**

Generally . . . CR 533.92

**R****RACKETEER INFLUENCED AND CORRUPT ORGANIZATIONS (See RICO OFFENSES)****RADIOLOGICAL OR NUCLEAR WEAPONS**

Illegal assembly or possession of chemicals or substances for manufacturing of . . . CR 509.28  
Possession . . . CR 509.26  
Use, knowing or reckless . . . CR 509.27



[References are to civil (CV) and criminal (CR) instruction numbers.]

# **RAFFLES (See also GAMBLING; GAMING)**

Generally . . . CR 515.092

# **RAPE**

Generally . . . CR 507.02(A)(1); CR 507.02(A)(2)

Attempted rape specification

Generally . . . CR 541.1418

Child victims under age of ten . . . CR 541.1419

Force or threat of force, compelled by . . . CR 541.1419

Repeat offenders . . . CR 541.1420

# **REAL PROPERTY**

Adjoining owners . . . CV 601.07

Adverse possession . . . CV 601.03

Automobile accident damaging realty, leaving scene of . . . CR 749.03

Breaking and entering . . . CR 511.13(A); CR 511.13(B)

*Caveat emptor* defense in real estate fraud claim . . . CV 449.13

Damaging or endangering

Criminal . . . CR 509.06

Damages for . . . CV 315.35

Easements . . . CV 601.09

Ejectment . . . CV 601.01

Eminent domain (See EMINENT DOMAIN)

Fraud in real estate sales; *caveat emptor* defense . . . CV 449.13

RICO offenses (See RICO OFFENSES, subhead: Acquiring or maintaining interest in enterprise or real property)

Special use property, eminent domain actions involving . . . CV 609.19

Trespass (See TRESPASS)

Vandalism . . . CR 509.05(A)

# **REASONABLE DOUBT**

General instructions . . . CR 405.07

Sample final instructions . . . CR 207.13

# **RECESS INSTRUCTIONS**

Generally . . . CR 401.11; CV 309.13

Extended recess and separate hearings . . . CR 401.13

Sample instructions . . . CR 205.05; CV 205.05

# **RECKLESS CONDUCT**

Generally . . . CV 401.41

# **RECKLESSNESS, CRIMINAL**

Defined . . . CR 417.17

Homicide, reckless . . . CR 503.041

# **RECORDS AND RECORDINGS**

Criminal record information, misuse of . . . CR 527.22

Grand jury court reporter, oath of . . . CR 301.05

Instructions, recording of . . . CR 101.13; CV 101.13

Securing of writings by deception . . . CR 513.43

Tampering with records . . . CR 513.42

# **RENT**

Eviction for non-payment

Generally . . . CV 613.01

Mobile home park tenant . . . CV 613.13

# **RENTED PROPERTY OR SERVICES**

Theft of . . . CR 513.02

# **REQUESTS TO INSTRUCT**

Final instructions . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75

General instructions, after . . . CR 101.75; CV 101.75

Special requests . . . CR 101.35; CR 101.75; CV 101.35; CV 101.75

Trial, during . . . CV 309.25

Written requests . . . CR 401.27; CV 309.25

# **RESIDENTIAL LENDING PRACTICES**

Advertisements, failure of mortgage broker to include registration number on . . . CV 525.17

Bona fide third parties, fees for services performed by . . . CV 525.11; CV 525.13

Consumer Sales Practices Act, violations of . . . CV 525.21

Cost of loan, failure of registrant to deliver good faith estimate of . . . CV 525.03

Damages . . . CV 525.19

Disclosure statement, failure of registrant to deliver mortgage loan . . . CV 525.03

Documents, failure to return original . . . CV 525.11

Fee premiums . . . CV 525.11

Improper payment of fees to mortgage broker . . . CV 525.13

Kickbacks . . . CV 525.11

Loan officer, license to act as . . . CV 525.01

Material changes in terms of loan, failure to provide timely disclosure of . . . CV 525.07

Mortgage broker, certificate of registration to act as . . . CV 525.01

Prohibited conduct . . . CV 525.09; CV 525.11

Punitive damages . . . CV 525.19

Referral fees . . . CV 525.11

Required information, failure of registrant to provide . . . CV 525.03

Tax and payment disclosures, failure of registrant to deliver . . . CV 525.05

Title insurance agents, violations by . . . CV 525.21

Unconscionable acts in connection with residential mortgages . . . CV 525.23

Unlawful lending practices by loan officer or mortgage broker . . . CV 525.15

# **RESTRAINT, UNLAWFUL**

Generally . . . CR 505.03

# **RETALIATION**

Generally . . . CR 521.05

# **REVIVOR**

Generally . . . CV 303.01

# **RICO OFFENSES**

Generally . . . CV 445.01

Acquiring or maintaining interest in enterprise or real property

Burden of proof . . . CV 445.09

Causation . . . CV 445.13

Damages . . . CV 445.13

Definitions . . . CV 445.11

Elements . . . CV 445.09; CV 445.11



[References are to civil (CV) and criminal (CR) instruction numbers.]

### RICO OFFENSES—Cont.

Acquiring or maintaining interest in enterprise or real property—Cont.

Use or investment of proceeds in (See subhead: Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise)

Civil actions . . . CV 445.01

Conducting or participating in affairs of enterprise

Burden of proof . . . CV 445.03

Causation . . . CV 445.07

Damages . . . CV 445.07

Definitions . . . CV 445.05

Elements . . . CV 445.03; CV 445.05

Conspiracy to engage in pattern of corrupt activity or collection of unlawful debt

Burden of proof . . . CV 445.21

Causation . . . CV 445.25

Damages . . . CV 445.25

Definitions . . . CV 445.23

Elements . . . CV 445.21; CV 445.23

Use or investment of proceeds in acquisition of real property, or establishment or operation of enterprise

Burden of proof . . . CV 445.15

Causation . . . CV 445.19

Damages . . . CV 445.19

Definitions . . . CV 445.17

Elements . . . CV 445.15; CV 445.17

### RIOT

Generally . . . CR 517.03

Aggravated

Generally . . . CR 517.02(A)

Inmate at correctional facility . . . CR 517.02(B)

### RISK

Assumption of risk . . . CV 403.09

Defined . . . CR 417.19

Substantial risk defined . . . CR 417.17

### ROADS AND BRIDGES

Governmental liability for failure to maintain . . . CV 425.05

### ROBBERY

Generally . . . CR 511.02

Aggravated . . . CR 511.01(A); CR 511.01(B)

Deadly weapon, with . . . CR 511.02

## S

### SAFECRACKING

Generally . . . CR 511.31

### SALE OF GOODS, CONTRACTS FOR (U.C.C.)

Acceptance of goods

Revocation by buyer (See subhead: Revocation of acceptance, buyer's)

Words or conduct indicating . . . CV 505.37

Buyer's remedies

Acceptance of goods, words or conduct indicating . . . CV 505.37

Damages

Breach of warranty . . . CV 505.45

### SALE OF GOODS, CONTRACTS FOR (U.C.C.)—Cont.

Buyer's remedies—Cont.

Damages—Cont.

Cover damages . . . CV 505.49

Incidental and consequential . . . CV 505.51

Nondelivery, repudiation, rejection and revocation of acceptance . . . CV 505.43

Limitation on . . . CV 505.53

Notice of breach . . . CV 505.47

Rejection . . . CV 505.35

Revocation of acceptance (See subhead: Revocation of acceptance, buyer's)

Confirmation or acceptance, additional terms in . . . CV 505.07

Damages

Buyer's remedies (See subhead: Buyer's remedies)

Seller's remedies

Incidental damages . . . CV 505.31

Non-acceptance or repudiation, damages for . . . CV 505.27

Delivery, tender of; seller's . . . CV 505.23

Express warranties

Generally . . . CV 505.11

Exclusion or modification . . . CV 505.17

Formation of contract

Generally . . . CV 505.01

Conduct of parties, formed by . . . CV 505.03

Implied warranties

Exclusion or modification . . . CV 505.19

Fitness for particular purpose . . . CV 505.15

Merchantability . . . CV 505.13

Usage of trade . . . CV 505.13

Modification, rescission and waiver . . . CV 505.09

Obligations of parties

Buyer's tender of payment . . . CV 505.21

Seller's tender of delivery . . . CV 505.23

Open price term . . . CV 505.05

Payment, tender of; buyer's . . . CV 505.21

Remedies

Buyer's (See subhead: Buyer's remedies)

Seller's (See subhead: Seller's remedies)

Rescission . . . CV 505.09

Revocation of acceptance, buyer's

Generally . . . CV 505.39

Damages . . . CV 505.43

Obligations after . . . CV 505.41

Seller's remedies

Damages

Incidental . . . CV 505.31

Non-acceptance or repudiation, for . . . CV 505.27

Limitation on . . . CV 505.33

Price, action for . . . CV 505.29

Resale . . . CV 505.25

Waiver . . . CV 505.09

Warranties

Breach by seller

Damages . . . CV 505.45

Notice of . . . CV 505.47

Express warranties

Generally . . . CV 505.11



[References are to civil (CV) and criminal (CR) instruction numbers.]

## **SALE OF GOODS, CONTRACTS FOR**

(U.C.C.)—Cont.

Warranties—Cont.

Express warranties—Cont.

Exclusion or modification . . . CV 505.17

Implied warranties (See subhead: Implied warranties)

## **SCENE VISITS**

Generally . . . CR 401.15; CV 309.15

Eminent domain actions . . . CV 609.03

## **SCHOOLS**

Prostitution-related offense in proximity of school  
. . . CR 541.1421

Raffle conduct, illegal . . . CR 515.092

Safety zone specification, school . . . CR 541.143

Weapons on or near premises (See WEAPONS, DAN-  
GEROUS, subhead: School premises, firearms, weap-  
ons or ordnance on or near)

## **SECURED TRANSACTIONS (U.C.C.)**

Accessions . . . CV 517.11

Buyer in ordinary course of business . . . CV 517.01

Collateral

Default, disposition after . . . CV 517.17

Description of . . . CV 517.03

Secured party, in possession of . . . CV 517.07

Commingled goods . . . CV 517.13

Default, disposition of collateral after . . . CV 517.17

Enforceability of interest . . . CV 517.05

Perfection of interest by possession . . . CV 517.09

Possession

Perfection of interest by . . . CV 517.09

Right of secured party to take . . . CV 517.15

Processed goods . . . CV 517.13

## **SECURITIES**

Advisor misconduct, liability for . . . CV 541.03

Common law claims for relief . . . CV 541.09

Fraud

Common law claims for relief . . . CV 541.09

Liability of seller for . . . CV 541.01

Investment advisor or investment advisor representative  
misconduct, liability for . . . CV 541.05

Prohibited conduct involving . . . CV 541.07

**SELF-DEFENSE** (See DEFENSES, subhead: Self-  
defense)

## **SELF-REPRESENTATION**

Instructions during trial . . . CR 401.03

## **SEQUESTRATION**

Generally . . . CR 429.03

## **SERVICE DOG**

Assault of . . . CR 521.321

Theft . . . CR 513.02

## **SERVICES**

Theft of . . . CR 513.02

## **SEX OFFENSES**

Battery, sexual . . . CR 507.03

Bestiality . . . CR 559.21

Cabaret, operation of adult (See CABARET, ADULT)

## **SEX OFFENSES—Cont.**

Child sexual abuse . . . CR 519.22

Child-victim oriented offense; duty of sex offender to  
register or send notice of intent to reside . . . CR  
550.041

Corruption of minor . . . CR 507.04

Illegally operating sexually oriented business . . . CR  
507.40(B)

Impaired persons

Nudity-oriented materials or performances, use in  
. . . CR 507.323

Obscenity involving, pandering of . . . CR 507.321

Sexually oriented matter involving, pandering of  
. . . CR 507.322

Importuning . . . CR 507.07

Loitering to engage in solicitation . . . CR 507.241

Massage establishments, prohibited activities in  
. . . CR 507.42

Matter harmful to juveniles

Deception to obtain . . . CR 507.33

Displaying . . . CR 507.311

Disseminating . . . CR 507.31

Minors

Attempted rape specification for victims under age of  
ten . . . CR 541.1419

Child-victim oriented offense; duty of sex offender to  
register or send notice of intent to reside . . . CR  
550.041

Commercial sexual exploitation of . . . CR 507.19

Corruption of . . . CR 507.04

Exploitation, commercial . . . CR 507.19

Matter harmful to juveniles (See subhead: Matter  
harmful to juveniles)

Nudity-oriented materials or performances, use in  
. . . CR 507.323

Obscenity involving, pandering of . . . CR 507.321

Sexually oriented matter involving, pandering of  
. . . CR 507.322

Unlawful sexual conduct with . . . CR 507.04

Nudity-oriented materials or performances

Impaired person in, use of . . . CR 507.323

Minors in, use of . . . CR 507.323

Objectionable materials, compelling acceptance of  
. . . CR 507.34(A); CR 507.34(B)

Obscenity, pandering of

Generally . . . CR 507.32

Impaired person, obscenity involving . . . CR  
507.321

Minors, obscenity involving . . . CR 507.321

Pandering

Obscenity

Generally . . . CR 507.32

Impaired person, involving . . . CR 507.321

Minors, involving . . . CR 507.321

Sexually oriented matter

Impaired person, involving . . . CR 507.322

Minors, involving . . . CR 507.322

Procuring . . . CR 507.23

Prostitution (See PROSTITUTION)

Public indecency . . . CR 507.09

Rape (See RAPE)



[References are to civil (CV) and criminal (CR) instruction numbers.]

**SEX OFFENSES—Cont.**

## Registration of sex offenders

## Change of address notice

Generally . . . CR 550.05

Periodic verification of address . . . CR 550.06

## Duty to comply with registration requirements

. . . CR 550.04

## Duty to register

Child-victim oriented offense . . . CR 550.041

Offenses before July 1, 1997 . . . CR 550.02

Offenses on or after July 1, 1997 . . . CR 550.04

## Notice of intent to reside; duty to send

Generally . . . CR 550.04

Child-victim oriented offense . . . CR 550.041

## Restraint, unlawful . . . CR 505.03

## Sexual imposition

Generally . . . CR 507.06

Gross sexual imposition . . . CR 507.05

## Sexually oriented business, illegally operating . . . CR 507.40(B)

## Sexually oriented matter, pandering of

Impaired persons, involving . . . CR 507.322

Minors, involving . . . CR 507.322

## Sexually violent offense defined . . . CR 507.71

## Sexually violent predators

Concluding instructions . . . CR 425.29

Escape . . . CR 521.34(A)(2)

Gross sexual imposition . . . CR 507.05

Specification . . . CR 507.71

## Sexual motivation

Defined . . . CR 507.71

Restraint, unlawful . . . CR 505.03

Specification in concluding instructions . . . CR 425.31; CR 507.72

## Sexual penetration, felonious . . . CR 507.12(A)(1); CR 507.12(A)(2)

## Sexual terms defined . . . CR 417.39

## Soliciting

Generally . . . CR 507.24

Loitering to engage in . . . CR 507.241

## Specifications

Attempted rape of victims under age of ten . . . CR 541.1419

Sexual motivation; concluding instructions . . . CR 425.31; CR 507.72

Violent predators, sexually . . . CR 507.71

## Terms defined . . . CR 417.39

## Unlawful sexual conduct with minor . . . CR 507.04

## Voyeurism . . . CR 507.08

**SEXUAL HARASSMENT**

## Employment discrimination claims

Hostile work environment . . . CV 533.17

Loss of tangible job benefit . . . CV 533.15

**SEXUALLY ORIENTED BUSINESS**

## Cabaret, operation of adult (See CABARET, ADULT)

## Illegally operating . . . CR 507.40(B)

## Massage establishments, prohibited activities in . . . CR 507.42

**SEXUAL TERMS**

Defined . . . CR 417.39

**SHAM LEGAL PROCESS, USE OF**

Generally . . . CR 521.52

**SIMULATION, CRIMINAL**

Generally . . . CR 513.32

**SLUGS, MAKING OR USING**

Generally . . . CR 513.33

**SOLICITATION**

## Compensation by public official, improper

Generally . . . CR 521.43(A)

Appointment or preference, for . . . CR 521.43(B)

Coerced contributions . . . CR 521.43(C)

## Sexual

Generally . . . CR 507.24

Loitering to engage in . . . CR 507.241

**SPECIAL VERDICTS**

Abolition of . . . CR 101.37; CV 101.37

**SPECIFICATIONS**

Generally . . . CR 541.01

Aggravating circumstances; concluding instructions . . . CR 425.27

## Body armor

Generally . . . CR 541.1411

Wearing of during commission of felony; concluding instructions . . . CR 425.19

## Complicity (See COMPLICITY)

## Firearms (See FIREARMS)

Gang activity, criminal . . . CR 541.142

Operating a vehicle under the influence (OVI) . . . CR 541.1413

## Peace officers

Aggravated vehicular homicide, victim of . . . CR 541.1414

Discharge of firearm at peace officer or correction officer . . . CR 541.1412

Physical harm, deadly weapons and . . . CR 425.21

Rape, attempted (See RAPE, subhead: Attempted rape specification)

School safety zone . . . CR 541.143

Sex offenses (See SEX OFFENSES)

**SPOUSAL SUPPORT**

Interference with issuance or modification of support order . . . CR 519.231

## Liability of husband for

Generally . . . CV 701.01

Burden of proof . . . CV 701.03

Exceptions . . . CV 701.07

Necessaries defined . . . CV 701.11

**STALKING, MENACING BY**

Generally . . . CR 503.211

**STATUTE OF LIMITATIONS**

Governmental liability . . . CV 425.13

**STILLBIRTH**

Damages . . . CV 315.07

**STOLEN PROPERTY, RECEIVING OF**

Generally . . . CR 513.51



[References are to civil (CV) and criminal (CR) instruction numbers.]

**SUBROGATION**

Damages . . . CV 315.25

**SUPPORT CLAIMS**

Child support (See CHILD SUPPORT)

Spousal support (See SPOUSAL SUPPORT)

**SURETIES**

Contribution, liability for . . . CV 513.07

Extension of time, effect of agreement for . . . CV 513.05

Liability

Bond of agent, surety's liability on . . . CV 513.01

Contribution, for . . . CV 513.07

Revival of . . . CV 513.09

Strict construction of contract . . . CV 513.03

**T****TAXES**

Damage awards, income tax considerations in . . . CV 315.45

Residential lending practices; failure of registrant to deliver tax and payment disclosures . . . CV 525.05

Sample final instruction for income taxes . . . CV 207.31

**TELECOMMUNICATION PROPERTY**

Unauthorized use, failure to report . . . CR 521.22(A)

**TENANTS (See LANDLORD AND TENANT)****TERRORISM**

Generally . . . CR 509.24

Money laundering in support of terrorism . . . CR 509.29

Soliciting or providing support for . . . CR 509.22

Threats, terroristic . . . CR 509.23

**TESTIMONY**

Accomplice testimony . . . CR 409.17

Acts of witnesses, weighing of testimony on . . . CR 409.33

Deposition, by . . . CR 409.27; CV 309.07

Expert witnesses (See EXPERT WITNESSES)

Eyewitness testimony, credibility of . . . CR 409.05; CV 305.05

Interpreters and translators

Civil trials, use in . . . CV 301.13

Criminal trials, in . . . CR 401.29

Criminal trials, use in . . . CR 401.29

Layman's opinion . . . CR 409.19; CV 309.09

Multiple defendants . . . CR 409.15

Refusal or inability to give

Generally . . . CV 309.19

Defendant's . . . CR 207.15; CR 409.07

**THEFT**

General instruction . . . CR 513.02

Cable service, theft of . . . CR 513.041

Computer systems or networks, unauthorized use of . . . CR 513.04

Insurance purposes, defined for . . . CV 709.41

Property, unauthorized use of . . . CR 513.04

Public or party official, by . . . CR 521.41

**THEFT—Cont.**

Stolen property, receiving of . . . CR 513.51

Unauthorized device, possession or sale of . . . CR 513.041

Value and special property . . . CR 425.23

Vehicle, unauthorized use of . . . CR 513.03

**THEFT IN OFFICE**

Value and separate property . . . CR 425.23

**THREATS**

Attempted rape specification, victim compelled by force or threat of force under . . . CR 541.1419

Defined . . . CR 417.35

Terroristic . . . CR 509.23

**TIME, ISSUE OF**

Presentation of issue . . . CR 413.07

**TOBACCO PRODUCTS, ILLEGAL DISTRIBUTION OF**

Children, to . . . CR 527.02(B)(1) *et seq.*

False identity documents, furnishing to child of . . . CR 527.02(B)(3)

Packs containing fewer than 20 cigarettes, sale of . . . CR 527.02(B)(4)

Signs regarding sale, failure to post . . . CR 527.02(B)(2)

Smaller quantity of cigarettes than placed in pack, sale of . . . CR 527.02(B)(5)

Vending machines, improper placement of . . . CR 527.02(C)

**TOOLS, CRIMINAL**

Possession of . . . CR 523.24

**TORT CLAIMS**

Agency liability . . . CV 423.03

Child, tort by; liability of parents . . . CV 407.19

Damages (See DAMAGES, subhead: Tort actions)

Employment relations (See EMPLOYMENT RELATIONS)

Intentional

Allocation of damages, multiple defendants, interrogatories required

Generally . . . CV 429.09

Other tortious conduct claims, with . . . CV 429.11

Business relationship, tortious interference with . . . CV 453.01

Contractual relationship, tortious interference with . . . CV 453.03

Employer intentional tort . . . CV 537.09

Employment relations, tortious interference with . . . CV 453.05

Inheritance, tortious interference with expectancy of . . . CV 453.07

**TOXIC CHEMICAL WEAPONS (See CHEMICAL WEAPONS)****TRADEMARKS**

Counterfeiting . . . CR 513.34

**TRADE PRACTICES**

Pyramid schemes . . . CR 533.92



[References are to civil (CV) and criminal (CR) instruction numbers.]

## TRADE SECRETS

Appropriation of . . . CV 537.11

## TRAFFICKING IN PERSONS (See HUMAN TRAFFICKING)

## TRAFFIC OFFENSES

Alcohol-related (See ALCOHOL OFFENSES, subhead: Traffic offenses)

Assured clear distance . . . CV 411.19

Backing of vehicle . . . CV 411.47

Blind persons, failure to yield right of way to . . . CV 411.63

Car signals . . . CV 411.49

Crosswalks, right of way of pedestrians in . . . CV 411.61

Divided highways . . . CV 411.41

Drug-related (See DRUG OFFENSES, subhead: Traffic offenses; operation under influence of alcohol or drugs)

Emergency vehicles (See subhead: Public safety vehicles)

Entering highway from other than roadway . . . CV 411.59

Flashing traffic signals . . . CV 411.09

Hand and arm signals . . . CV 411.49

Hanging outside of vehicles . . . CV 411.65

Hazardous zones . . . CV 411.33

### Highways

Divided . . . CV 411.41

Entering highway from other than roadway . . . CV 411.59

One-way . . . CV 411.35

Parking on . . . CV 411.67

Intersections, turns at . . . CV 411.43

Left of center, driving on

Generally . . . CV 411.31

Passing . . . CV 411.27

Left turn, vehicle yielding right of way for . . . CV 411.09

Local traffic laws . . . CV 411.09

Marked lanes, driving in . . . CV 411.37

One-way highways . . . CV 411.35

Opposite directions, vehicles traveling in . . . CV 411.25

Outside of vehicles, traveling on . . . CV 411.65

Overtaking and passing

Generally . . . CV 411.27

Hazardous zones . . . CV 411.33

Left of center, on . . . CV 411.27

Right, on . . . CV 411.27

Right of way, failure of overtaken vehicle to yield . . . CV 411.29

Parking on highway . . . CV 411.67

Passing (See subhead: Overtaking and passing)

Pedestrians

Blind persons, failure to yield right of way to . . . CV 411.63

Control signals . . . CV 411.09

Crosswalks, right of way in . . . CV 411.61

Sidewalks, yielding right of way on . . . CV 411.53; CV 411.55

## TRAFFIC OFFENSES—Cont.

Police officers, failure to comply with order or signal of . . . CR 521.331; CV 411.03

Private property, rules on . . . CV 411.07

Public safety vehicles

Duty of others . . . CV 411.57

“Emergency call” defined . . . CV 411.05

Red or stop signals, going past . . . CV 411.05

Right of way to, yielding . . . CV 411.57

Racing, street . . . CV 411.23

Reasonable control of vehicle . . . CV 411.15

Reversible lanes, signals for . . . CV 411.11

Riding on outside of vehicles . . . CV 411.65

Right of way

Generally . . . CV 411.51

Blind persons, failure to yield to . . . CV 411.63

Crosswalks, pedestrians in . . . CV 411.61

Entering highway from other than roadway . . . CV 411.59

Failure of overtaken vehicle to yield . . . CV 411.29

Left turn . . . CV 411.09

Public safety vehicles, yielding to . . . CV 411.57

Sidewalks, yielding to pedestrians on . . . CV 411.53; CV 411.55

Stop or yield signs, at . . . CV 411.09

Yield signs, at . . . CV 411.09

Right side of roadway, failure to drive on; exceptions . . . CV 411.21

Sidewalks

Pedestrians on, yielding right of way to . . . CV 411.53; CV 411.55

Stopping in residential or business districts . . . CV 411.53

Signal lights

Car signals . . . CV 411.49

Changing . . . CV 411.11

Flashing signals . . . CV 411.09

Lane change signals . . . CV 411.49

Pedestrian control signals . . . CV 411.09

Public safety vehicles going past red or stop signals . . . CV 411.05

Reversible lanes, for . . . CV 411.11

Traffic control devices . . . CV 411.09

Turning, for . . . CV 411.49

Space between moving vehicles

Generally . . . CV 411.39

Assured clear distance . . . CV 411.19

Speed

Assured clear distance . . . CV 411.19

Decreasing speed signals . . . CV 411.49

Proper speed . . . CV 411.17

Reasonable speed . . . CV 411.17

Starting and backing of vehicle . . . CV 411.47

Stopped vehicles, starting of . . . CV 411.47

Stop signs, right of way at . . . CV 411.09

Street racing . . . CV 411.23

Traffic control devices . . . CV 411.09

Traveling on outside of vehicles . . . CV 411.65

Turns

Car signals . . . CV 411.49

Hand and arm signals . . . CV 411.49

Intersections, at . . . CV 411.43

U-turns . . . CV 411.45



[References are to civil (CV) and criminal (CR) instruction numbers.]

### **TRAFFIC OFFENSES—Cont.**

- U-turns . . . CV 411.45
- Willful and wanton disregard of safety of persons or property, operation in . . . CV 411.13
- Yield signs, right of way at . . . CV 411.09

### **TRANSCRIPTS**

- Generally . . . CR 409.27; CV 309.07

### **TRANSFERRED INTENT**

- Proof of . . . CR 417.01

### **TRANSLATORS**

- Civil trials, use in . . . CV 301.13
- Criminal trials, use in . . . CR 401.29

### **TRESPASS**

- Generally . . . CV 601.05
- Aggravated . . . CR 511.211
- Breaking and entering on land . . . CR 511.13(B)
- Criminal
  - Generally . . . CR 511.21
  - Public amusement, trespass on place of . . . CR 511.23
- Public amusement, criminal trespass on place of . . . CR 511.23

### **TRIAL, INSTRUCTIONS DURING**

- Generally . . . CR 101.31; CV 101.31
- Admonitions to jury . . . CV 301.07
- Experiments, prior to conducting of . . . CR 401.17; CV 309.17
- Improper questions . . . CV 309.23
- Jury view, prior to (See subhead: Scene visits, prior to)
- Limited purpose evidence . . . CR 401.23; CV 309.05
- Notetaking by jurors . . . CR 401.19; CV 301.09
- Oath of jury, prior to administration of . . . CV 301.01
- Orientation of new jury . . . CR 401.07; CV 301.05
- Outline of trial, checklist for . . . CR 201.01; CV 201.01
- Prior convictions and acts . . . CR 401.25; CR 409.11
- Qualification of jury . . . CR 401.01; CV 301.03
- Questions by jurors . . . CR 401.21; CV 301.11
- Recess instructions
  - Generally . . . CR 401.11; CV 309.13
  - Extended recess and separate hearings . . . CR 401.13
- Requests to instruct, written . . . CR 401.27; CV 309.25
- Scene visits, prior to
  - Generally . . . CR 401.15; CV 309.15
  - Eminent domain actions . . . CV 609.03
- Self-representation . . . CR 401.03
- Swearing of jurors, after . . . CR 401.09
- Testimony, refusal or inability to give
  - Generally . . . CV 309.19
  - Defendant's . . . CR 409.07
- Voir dire examination by counsel . . . CR 401.05
- Witnesses, competence of . . . CV 309.21

## **U**

### **UNDISPUTED FACTS**

- General instructions . . . CR 101.51; CV 101.51

### **UNDISPUTED ISSUES**

- General instructions . . . CR 101.49; CV 101.49

### **UNDUE INFLUENCE**

- Tortious interference with expectancy of inheritance, as . . . CV 453.07
- Will, making of . . . CV 633.05

### **UNFAIR COMPETITION**

- Malicious litigation, by . . . CV 439.05

### **UNIFORM COMMERCIAL CODE**

- Sale of goods (See SALE OF GOODS, CONTRACTS FOR (U.C.C.))
- Secured transactions (See SECURED TRANSACTIONS (U.C.C.))

### **USURY**

- Generally . . . CR 505.22

## **V**

### **VANDALISM**

- Burial sites . . . CR 509.05(D)
- Cemeteries . . . CR 509.05(C)
- Occupied structure . . . CR 509.05(A)
- Property . . . CR 509.05(B)
- Railroad grade crossing device . . . CR 509.101
- Real property . . . CR 509.05(A)

### **VEHICLE IDENTIFICATION NUMBERS, TAMPERING WITH (See AUTOMOBILES AND OTHER MOTOR VEHICLES)**

### **VEHICULAR ASSAULT**

- Generally . . . CR 503.08

### **VEHICULAR HOMICIDE**

- Generally . . . CR 503.06; CR 503.07
- Aggravated
  - Generally . . . CR 503.06
  - Peace officer as victim specification . . . CR 541.1414
- Manslaughter, vehicular . . . CR 503.06
- Pregnancy, unlawful termination of
  - Generally . . . CR 503.07
  - Aggravated . . . CR 503.06

### **VENUE**

- Presentation of issue . . . CR 413.07

### **VERDICTS**

- Generally . . . CR 425.33; CV 323.01
- Acceptance . . . CR 101.85; CV 101.85
- Discussion of case by jurors after . . . CR 425.41
- Eminent domain actions . . . CV 323.05; CV 609.23
- Failure to reach; instructions during deliberations . . . CR 429.09; CR 429.11; CV 319.07
- Forms and instructions . . . CR 101.59; CR 425.33; CV 101.59
- Identity fraud actions, verdict form . . . CR 513.49
- Impossible; instructions during deliberations . . . CV 319.07
- Mistrial for failure to reach; instructions during deliberations . . . CV 319.07
- Paternity actions . . . CV 705.13



[References are to civil (CV) and criminal (CR) instruction numbers.]

**VERDICTS—Cont.**

Quotient verdicts for damages

Generally . . . CV 315.41

Sample final instructions . . . CV 207.27

Sample final instructions

Generally . . . CR 207.27

Quotient verdicts for damages . . . CV 207.27

Unanimous verdict . . . CR 207.39

Special verdicts, abolition of . . . CR 101.37; CV 101.37

Unanimous verdict, sample final instruction for . . . CR 207.39

Will contests . . . CV 323.03; CV 633.13

**VESSELS**

Alcohol-related offenses (See **ALCOHOL OFFENSES**, subhead: Watercraft and waterways violations)

Insurance on steamboat . . . CV 709.21

**VICTIMS**

Child victims under age ten, permanent disabling harm to . . . CR 541.1426

Intimidation of . . . CR 521.04

Pregnant victim . . . CR 541.1423

**VIDEOTAPES**

Evidence, as . . . CR 409.31

**VIOLENT CAREER CRIMINAL**

Generally . . . CR 541.1424

Firearm by, use of . . . CR 523.132

**VOIR DIRE**

Generally . . . CR 101.21; CV 101.21

Counsel, examination by . . . CR 401.05

Grand jury . . . CR 301.01

Instructions

Common . . . CR 101.23; CV 101.23

Sample . . . CR 203.03

Instructions, sample . . . CV 203.03

Oath, instructions before administration of . . . CV 301.01

Welcoming remarks . . . CR 203.01; CV 203.01

**VOLUNTARY MANSLAUGHTER**

Generally . . . CR 503.03

**VOYEURISM**

Generally . . . CR 507.08

**W****WARRANTIES**

Sale of goods, contracts for (See **SALE OF GOODS, CONTRACTS FOR (U.C.C.)**)

**WATERCRAFT AND WATERWAYS VIOLATIONS**

Alcohol-related (See **ALCOHOL OFFENSES**, subhead: Watercraft and waterways violations)

Drug-related

Operating vessel under influence of alcohol or drugs . . . CR 547.11(A)(1)

Prohibited alcohol or drug concentration, operating vessel with . . . CR 547.11(A)(2)-(6)

**WEAPONS, DANGEROUS (See also **ORDNANCE, DANGEROUS**)**

Biological weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Chemical weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Concealed weapons, carrying of . . . CR 523.12

Courthouse, in . . . CR 523.123; CR 523.123(A); CR 523.123(B)

Deadly weapons

Physical harm specification, and . . . CR 425.21

Purpose in use of . . . CR 417.01

Robbery with . . . CR 511.02

Detention facility, possession by person in

Generally . . . CR 523.131

Conveyance into facility . . . CR 521.35(A); CR 521.36

Explosive devices

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Firearms (See **FIREARMS**)

Habitation, discharging at or into . . . CR 523.161

Intoxication, use under . . . CR 523.15

Person under disability, possession by

After 3/23/15 . . . CR 523.13(A)

After 9/30/11 but before 3/23/15 . . . CR 523.13(A)

After 7/1/1996 but before 4/8/2004 . . . CR 523.13(B)

After 8/4/04 but before 9/30/11 . . . CR 523.13(A)

Before 7/1/1996 . . . CR 523.13

Physical harm specification, deadly weapons and . . . CR 425.21

Prohibited premises, discharging on or near . . . CR 523.162

Purpose in use of deadly weapons . . . CR 417.01

Radiological or nuclear weapons

Possession . . . CR 509.26

Use, knowing or reckless . . . CR 509.27

Robbery with deadly weapon . . . CR 511.02

School premises, firearms, weapons or ordnance on or near

Discharging of firearm at or into school . . . CR 523.161

Illegal conveyance or possession . . . CR 523.122

Safety zone specification, school . . . CR 541.143

Specifications

Physical harm, deadly weapons and . . . CR 425.21

School safety zone . . . CR 541.143

Transactions, unlawful . . . CR 523.20

**WILDLIFE VIOLATIONS**

Division of Wildlife orders, violation of . . . CR 551.11

Exotic animals, crimes related to . . . CR 551.13

Harassment of hunters . . . CR 551.07

Hunting without permission . . . CR 551.05

Injury of persons or property by hunters . . . CR 551.03

Jacklighting . . . CR 551.01

Wildlife officers, failure to obey orders of . . . CR 551.09



[References are to civil (CV) and criminal (CR) instruction numbers.]

**WILL CONTESTS**

Generally . . . CV 633.01  
Additional considerations . . . CV 633.09  
Burden of proof . . . CV 633.01  
Capacity to make will . . . CV 633.03  
Definitions . . . CV 633.01  
Fraud . . . CV 633.07  
Mental capacity . . . CV 633.03  
Probate defined . . . CV 633.01  
Revocation of will, determination of . . . CV 633.11  
Sound mind and memory, determination of . . . CV 633.03  
Undue influence . . . CV 633.05  
Verdict . . . CV 323.03; CV 633.13

**WILLFUL OR WANTON MISCONDUCT**

Negligence . . . CV 401.41  
Traffic offenses . . . CV 411.13

**WITNESSES**

Acts of witnesses as evidence . . . CR 409.33  
Competence  
    Paternity claim, parties in . . . CV 705.11  
    Questioned; instructions during trial . . . CV 309.21  
Defined . . . CR 521.04; CR 521.24  
Expert witnesses (See EXPERT WITNESSES)  
Eyewitness testimony, credibility of . . . CR 409.05;  
    CV 305.05

**WITNESSES—Cont.**

Interpreters and translators  
    Civil trials, use in . . . CV 301.13  
    Criminal trials, use in . . . CR 401.29  
Intimidation of . . . CR 521.04  
Testimony, refusal or inability to give  
    Generally . . . CV 309.19  
    Defendant's . . . CR 207.15; CR 409.07

**WORKERS' COMPENSATION CLAIMS**

Generally . . . CV 427.01  
Fraud  
    Generally . . . CR 513.48  
    Value . . . CR 425.23

**WRITTEN INSTRUCTIONS**

Generally . . . CR 101.61; CV 101.61

**WRONGFUL CONVEYANCE**

Generally . . . CV 447.01

**WRONGFUL DEATH**

Compensatory damages . . . CV 315.49  
Employer intentional tort . . . CV 537.09  
Intervening causes . . . CR 417.25

**WRONGFUL POSSESSION**

Generally . . . CV 447.01  
Conversion (See CONVERSION)







